What is a fluoroscopic examination? Tell us the extent of the work involved in a fluoroscopic examination and what the charge would be in that kind of a case. A. In that case that was a fluoroscopic examination of the stomach to detect the presence of ulcers. The charge at that time I presume would be around $10, for making the examination.

Q. Did you feel it was reasonably necessary in taking care of this patient? A. It is reasonably necessary, a necessary thing in diagnosing a case of ulcers of the stomach and providing for after-care for the patient.

Q. Was there any question in that case about coverage? A. No, I presume not.

Q. Then there is a letter from Industrial to you, dated February 3, 1939, Exhibit 2567:

"At this time I wish to call your attention to the fact you are the only physician in Hillsboro who pro-
2252 ceeds with surgical operations that may come under coverage of our medical contracts without first reporting the cases to this office and giving us an opportunity to check into them. We are going to ask for your cooperation in the future, to the end that all such cases will be reported to us before surgery is done. This cooperation is necessary in order to make the services of the physician acceptable to our organization."

Did you have very many instances where you were reminded you had to get authorization in cases? A. Yes, I had quite a few.

Q. Was that a continuous matter or was it just sporadic? I mean their insisting that you get authorization before proceeding with any extensive treatment of patients or operations? A. No, that was continuous, from the time I first started to practice in Forest Grove in 1929. In 1929, however, one man was appointed at Forest Grove to be their first-aid man. I was not even recognized as being a physician out there.

Q. Not even a first-aid man? A. No. Of course, these contracts were in existence at the time I started to practice.

Q. How long was it before they recognized your ability as a first-aid man and permitted you to do it? A. Well, a matter of a few months, I presume, at which time I apparently went beyond their definition of a first-aid man.
2253 I started doing fluoroscopic examinations and so forth, and I did work that involved more than $2, a $2 fee, and then they began to object, of course, to that.

Q. Did you have many disputes about fees during this period from 1941—I mean from 1929 to 1941 or 1942? A. Well, there were several disputes about fees. Of course, we followed mostly the fee schedule which they had laid down. There wasn't much of a way we could get around it, but in some cases where there wasn't a definite fee schedule they disputed our fees; in fact, they thought they were a little bit high.

Q. I think there is one here in which they gave you $25 for something. You have looked at these letters yesterday? A. Yes.

Q. In fact, this morning? A. Yes.

Q. Do you remember what that was? A. That was a gunshot wound through the thigh. I don't remember what bill I rendered them, but they paid me $25 and told me they thought that should be adequate.

Q. What do you think about it? A. I don't think it was.

Q. What do you think would have been a reasonable fee for that? A. Oh, I should think anywhere from $35 to $50. I don't remember the exact time of the treatment.

Q. During that time did you take care of men
2254 who were under the Workmen's Compensation law for the Industrial Accident Commission? A. Yes.

Q. Was there interference by the Industrial Accident Commission as to the manner in which you took care of these men? A. These Industrial Accident cases were subcontracted.

Q. I am referring, first, to a little different subject, and that is when you took care of patients directly for the Industrial Accident Commission, that were not subcontracted— A. Oh, no.

Q. You mean you didn't? A. Yes, I took care of those cases. I say there was no interference with taking care of cases for the Accident Commission.

Q. Then you also took care of cases where the Industrial Accident Commission had contracted, I think you said, with a hospital association? A. Yes.

Q. In those cases what did the commercial hospital associations want to pay you on fees? A. In those cases they paid us their fee schedule that was less than the State Accident Commission's fee schedule, until, indirectly we found out we could force them to pay the State Industrial Accident Commission's fee schedule.

Q. About how much was the difference? Could you

give us an idea of the difference between their fee
2255 schedule and the State Industrial Accident Commission's fee schedule? A. Roughly, I would say 25 per cent.

Q. How did you happen to stop taking tickets when you did, in 1941 or 1942, whenever it was? A. Well, I and a number of others in the community had gotten very tired of this business of continually writing back and forth and of squabbling over the management of the cases and so forth, and we heard, of course, of other instances in which doctors were refusing tickets, and accepting patients as private patients, and regarding the association purely as insurance companies, so I decided that is the attitude I would take. I had, in fact, had that attitude for some time, and thought I would go ahead and reject tickets entirely and bill the patients and let them settle with their insurance company, to avoid this connection altogether, and get away from the control or the interference of hospital associations.

Q. Then, at any later time did you start taking tickets? A. I started taking tickets again about in March of 1948. By that time the hospital associations themselves had assumed the role of insurance companies. They no longer interfered with the relationship of the physician with the patient. They allowed the patient to choose any doctor in the community, any physician in the community. They did not attempt to dictate to the physician what he should do for the patient. Their fee schedule had been adjusted upward so that it was comparable to the fee sched-
2256 ule of OPS, which is our own organization. It ran a little less, but they usually pay 100 per cent, so it balanced out about the same.

Q. Did you find your experience with them considerably different? A. Yes.

Q. You now find your experience with them considerably different than it was in the days you have been talking about? A. It is very much different, yes. I think it was only the opposition of the doctors and the organization of competing hospital associations that has brought about that difference in the relationship.

Q. You have been on the Council, you say, for two years, the Council of the State Society? A. This is my second year.

Q. While you have been on the Council, has there been any proposal in the Council that they endeavor to stop doctors from taking tickets of hospital associations? A. No, there hasn't.

Q. During the time that you were rejecting tickets, did you take care of the patients? A. Yes, I accepted them as private patients.

2257 Mr. Jaureguy.

Q. And did you give them itemized statements? A. Yes, gave them itemized statements or itemized receipts when they paid the bill and let them recover from the insuring company.

Q. Do you know whether the other doctors in Washington County, whether they were taking tickets before you started in this last time?

Mr. Marcus: Object, your Honor, on the ground his answer would have to be hearsay.

The Court: You may answer.

Mr. Jaureguy:

Q. You may answer. A. What?

Q. Whether the other doctors in Washington County started taking tickets this last time before you did. A. Yes, they did, I know they did; especially the men returning from the service started taking tickets immediately, and others who had remained in the community through the war were taking them at a much earlier date.

Q. Was there any incident that caused you to start taking them again? A. No particular incident, no. Just in summarizing the situation I discovered myself and my group were the only ones in the county not taking the tickets, and in so far as the relationships had improved so much and I thought it was all right to go back and take them again.

2258 Q. Well, did you have any discussion with Mr. Bechtold about it? A. Yes, I did. I saw Mr. Bechtold and told him I would again take his tickets on the basis of the existing relationship, that they allow patients to go to the physicians that they wished and that they could come to our hospital and not be chaneled through the community into the Portland hospitals.

Mr. Jaureguy: You may take the witness.

Cross Examination

By Mr. Marcus:

Q. Doctor, you referred to first-aid work. During what period of time were you doing first-aid work for these hospital associations? A. Oh, from 1929 into the thirties.

Q. Now, Doctor, I think I better ask you what associations you dealt with. A. The National and Industrial Hospital Associations.

Q. Now, Doctor, with reference to these patients which were sent to Portland, you don't mean do you that in every case where one of those patients was sent you thought you were qualified? A. Not in every case, no.

Q. And I suppose you knew that the facilities in Portland as far as medicine was concerned were superior to those in the area where you were? A. At that time
2259 they were, yes.

Q. Now, Doctor, you have mentioned the various difficulties you had with these hospital associations. Isn't that the same kind of difficulty you would have with any prepaid medical care organization? A. No, it isn't.

Q. Well, you are a participating physician with OPS? A. I am.

Q. Well, haven't you had similar difficulties with OPS? A. Not of that nature. They don't attempt to tell me how to treat the patient.

Q. Well, Doctor, I call your attention to Exhibit 820. That is the minutes of the Multnomah Supervisory Committee of OPS, and I want to read just one part. A name is listed, the name of a patient, and Kaiser Company, Inc. Drs. A. O. Pitman and D. E. Wiley.

"After having denied liability for gall bladder surgery in this case at its last meeting the committee further considered statements from Drs. Pitman and Wiley concerning the justification of gall bladder surgery. The committee reversed its former position and authorized OPS to assume full responsibility for surgery performed on May 22, 1944.

"The management was instructed to write Drs. Pitman and Wiley calling their attention to the necessity
2260 for securing authorization before proceeding with major surgery."

Doesn't that refresh your recollection that the same sort of thing happened with OPS? A. The word "authorization" there is ill-advisedly used. We don't get authorization from OPS to do surgery. We attempt to clear the case. We find out whether the case has coverage or not. It is important to the patient to know ahead of time whether they are going to be covered or not, but OPS does not issue authorization to do the surgery.

Q. Well, that is true with the hospital associations, they

want to know whether they are going to be liable or not, don't they? A. They like to know in advance whether they are going to be liable for the payment of the bill all right.

Q. That is right. Now, Doctor, there have been a few doctors including yourself who have referred to this matter of being told what to do with the patient. Doctor, do you consider doctors omniscient? A. No, I don't.

Q. Well, I want to give you a couple of cases, Doctor. I know a boy who had asthma quite bad and when he would have severe attacks his stomach muscles would become very sore, that general area. On one occasion when he had an attack of this sort his mother called the family doctor and his family doctor was not available. She then called the school doctor who had never been called in for
2261 this particular patient before. He came to the home and he pressed in various places and the child said it pained him when he pressed at various places. The doctor then said that the child had appendicitis and should be rushed to the hospital. The mother said she thought it might be from his asthma attacks. She refused to send him to the hospital until she had time to contact the family doctor. The family doctor finally came and diagnosed it as being from the asthma attacks. That boy never had an operation on appendicitis.

Now, there was a case of lay interference. Do you consider that justified? A. That is a lot different than a person sitting in an office in Portland and deciding what should be done with the patient. The mother knew something of the history of the case.

Q. Now, let's change it a bit. We have the manager of a lay hospital who has had the same family under coverage for a great many years and he has had recurrently bills for asthmatic treatments, and the mother has talked to him about this case from time to time. He gets a call from this school doctor who says, "I want authority to have this boy's appendix taken out." The lay manager then says, "Well, I know something of the history of this case and I wonder whether this might not be an instance where the boy is getting these pains from asthma."

Now, would you consider that an improper interference by a layman in the doctor-patient relationship? A.
2262 Yes, I would.

Q. That is, it would be all right to have the boy's appendix taken out even though it wasn't necessary? A.

I would consider that the man in Portland might have known of some similar case, but he didn't know of that particular case. He hadn't known the opinion of the family doctor that similar attacks had been due to asthma.

Q. I am giving you a case where by virtue of having had this account for a great many years, by virtue of getting bills from the family doctor, by virtue of having spoken to the mother, he had become acquainted with the type of symptoms this boy had, and because of that when this doctor suggested an operation on appendicitis he suggested that it might be, that the boy's symptoms might be from asthma, and you still think that was an improper interference by a layman? A. If this layman knew this family doctor's opinion and observation had been that in the first place it would give him—

The Court: Suppose it turned out the layman was wrong?

Mr. Marcus: This is a case, your Honor, which I am giving you in which the layman was right.

The Court: How could you prove that?

Mr. Marcus: Well, I have just given the case and I deliberately said that I knew of the case.

The Court: Yes. But how do you know he didn't
2253 have a bad appendix? Nobody ever saw it.

Mr. Marcus: I happen to be that person.

The Court: I knew you were from what you said earlier in the trial.

Mr. Marcus:

Q. I will give you another. Let's go into this another way. In our profession, my profession, we have a number of current periodicals which deal with the current developments in the law, and I assume that is true in your profession; is that not so? A. That is so.

Q. I would say based upon my own personal experience in being associated with many attorneys that perhaps less than 50 per cent of the members of my profession attempt to keep themselves current with the new developments by any careful or regular examination of these periodicals. Some are too busy, some just don't have the temperament, and for various reasons they don't do so. Would you assume that would be true in your profession? A. No. I think all physicians do some reading of the current literature. The amount varies considerably. I don't think there

is anybody that doesn't read some of the literature that comes out.

Q. And some would read more than others? A. Yes.

Q. And you would assume then that some doctors would be more current with recent developments than other doctors? A. That is natural to assume that.

Q. And is it a fair assumption that someone, a manager of a hospital association, would have frequent contacts with doctors who might talk to him about the most recent developments? A. Yes. He might even read the lay literature on the subject, Readers Digest and so forth.

Q. Now, Doctor, do you think it would be an improper interference in the doctor-patient relationship if a doctor called this man up and told him that this man had a certain condition and he was treating him for it and that he thought that it would be necessary to have this course of treatments; would it be improper for the layman to ask the doctor if he had ever tried using "X" which this manager had been recently told was one of the newest things in the field? A. I think that would be just as improper for him to do that as it would be for him to give an attorney advice on legal matters.

Q. You think then that when one is a member of a certain profession it is improper for anyone outside of that profession to give him any advice which is within the profession? A. It is rather presumptuous.

Q. I have asked you whether it is improper. A. A definition of the word "improper"—I don't suppose it is improper.

Q. Apparently, Doctor, then you think your own profession is a closed fence in so far as receiving any advice or suggestions from those who are not members of the profession, is that not so? A. Not at all, but I think anybody from merely reading medical literature isn't capable of giving any sound advice. Suggestions are always acceptable, of course.

Q. Well, Doctor, are you acquainted with the publication War Medicine? A. No.

Q. Well, Doctor, during the war that publication was published by the American Medical Association and it contained articles dealing with the most current methods of dealing with injuries which might be suffered by the enemy coming over here, injuries which might be likely to occur during wartime. Would you not think that a doctor

who had that publication and read it was better able to take care of such injuries if they should occur than a doctor who had not? A. Your wartime injuries are not greatly different from industrial injuries.

Q. I have asked you a question, now, Doctor. I have given you a situation where the American Medical Association publishes a special magazine dealing particularly with injuries and illnesses which might be expected to occur during a period of war, and dealing with them on the basis of the most current information, and I
2266 have asked you whether a doctor who took that magazine would not be in a better position to treat patients who might come within the category of ailments covered by that magazine than a doctor who did not take such a magazine. A. You will have to assume that material is not printed in other magazines then, is that the assumption?

Q. Yes. A. Yes. that man would be better prepared.

Q. And you think it is improper, Doctor, if a layman buys the Readers Digest at the neighboring newsstand and he is referred, for instance, to the use of, we will say, chlorophyll—

The Court: Antihistamines, that is the latest one.

Mr. Marcus: Your Honor, I would like to be able to proceed.

The Court: Yes. I knew you might get angry.

Mr. Marcus: Your Honor has succeeded.

The Court: I am letting you have a fine time and a wide range and you will have to accept some interjections from me and adjust yourself to them.

Mr. Marcus:

Q. Well, coming back to this example, I am giving you an example of someone going to the newsstand and reading in the Readers Digest that chlorophyll has been found to be an effective method of facilitating the healing of wounds. And a doctor gets a patient who is injured and the wound doesn't heal well and he notifies the hospital association about this patient and the manager of
2267 the hospital association is the one who had gotten the Readers Digest and read that article. Do you think it would be improper for the manager to suggest to the doctor that he might look into the matter of using chlorophyll? A. I still think it is presumptuous for him to make suggestions to the technical expert on the case.

Q. Now, Doctor, as a matter of fact, when that period came when you ceased to take tickets from these hospital associations, wasn't it because you thought it was Medical Society policy to do so? A. No. The Medical Society had no effect on me whatsoever.

Q. Well, you were pretty active in medical societies at that time, were you not? A. Not at that time, except in our own local society.

Q. Well, let's take that society. I suppose that society had a policy too, did it not? A. Well, I was one of the formulators of that policy at that time I presume.

Q. Yes, you were one of the formulators of that policy with respect to hospital associations, were you not? A. However, we never took any action as the County Society. We left that to the individual.

Q. You mean you took society action individually, is that right? A. I wouldn't define it that way, no.

2268 Q. You were also quite active in trying to get business away from the hospital associations in that area, were you not? A. We went into competition with them.

Q. Well, I asked you a question, Doctor, concerning yourself. A. Yes, I was reasonably active.

Q. Doctor, you have been very recently on a committee of the State Society with respect to OPS, is that not so? A. That is so.

Q. What is the name of that committee? A. It was a study committee and didn't have a particular name. OPS had it, I presume.

Q. It was a committee appointed to study the operations of OPS, is that correct? A. Yes.

Q. And is that committee still functioning? A. No.

Q. When did it cease to function? A. It ceased to function after it gave its report to the House of Delegates meeting last October I believe.

Q. Have the minutes of that meeting ever been published to your knowledge? A. No, I believe not. They are published, yes, probably in the Northwest Medical Journal.

Q. Have you ever seen it in the Northwest Medicine? A. Yes.

2269 Q. You say the societies seldom ever had any policy with respect to hospital associations or prepaid medical care organizations which were not

doctor-sponsored, but it was merely a matter for the individual doctor? A. That is correct.

Q. Doctor, I call your attention to Exhibit 348 which consists of the minutes of the proceedings of the Council of the State Society, March 7, 1942, and this is what it says:

"Dr. Pitman, President of the Washington County Medical Society, reports that the society had adopted the following resolution:

"Resolved that the State Industrial Accident Commission be respectfully informed that since February 1, 1942 the individual doctors of Washington County have not accepted tickets of hospital associations other than those recommended by the Oregon State Medical Society; that as a result of this action the individual workmen of Washington County who are under sub-contract for industrial accidents are locally serviced only by osteopaths and chiropractors or are forced to go to Portland for medical and surgical service; that we respectfully request the State Industrial Accident Commission to investigate whether such sub-contracts are now satisfactory to the workmen and to the State Industrial Accident Commission."

Doctor, does that refresh your recollection as to whether the Society to which you belong ever took action
2270 with respect to these hospital associations? A. That is an exception to my statement. However it is action against the sub-contracting of industrial cases to other groups, that is seeking action of the State Industrial Accident Commission.

2271 Q. Doctor, I believe that you mentioned something about National Hospital Association, or did that include the Industrial Hospital Association as well? You said something about the National Hospital Association paying you less than the Industrial Accident Commission fees. Does that apply to both associations or just the one? A. I think it would apply mostly to the National, as most of my work was with the National Hospital Association in my early days. I do not recall any definite cases covered by Industrial where that applied.

Q. Don't you know that during this depression period the Industrial Accident Commission was itself paying only on a 25-per cent-discount basis? A. I have a very vague recollection of that.

Mr. Marcus: That is all.

Redirect Examination

By Mr. Jaureguy:

Q. He said "during this period." Did you mean by your answer to say from 1929 to 1942 that was the case? A. I understood him to say "during the depression period," which would be around 1933 or 1934 someplace.

Q. When you spoke of the National paying less than the Industrial Accident Commission, did you mean to say at that particular period they were doing what the Industrial Accident Commission did? A. No, there is no con-
2272 nection between the two there. I believe that the Industrial Accident Commission was paying the full schedule, and they were obtaining our services for less than that schedule.

Q. When the Industrial Accident Commission was paying 25 per cent less than their own schedule, what was National doing, if you know? A. I don't recall that. It was a very short period I think when that occurred.

Q. You agreed with Mr. Marcus' assumption that at that time the facilities in Portland were superior to the facilities at Hillsboro; that is, the hospital facilities. Were there cases that National or Industrial, or both, took to Portland where you felt the facilities in Hillsboro were ample? A. Yes.

Q. Would that be most of the cases or would that be simply a minority of the cases where the hospital facilities at Hillsboro were ample? A. Of course, our facilities have improved from year to year while I have been out there. When I first went out, we had rather poor facilities, but they improved from year to year until a time we had as good facilities as are available in Portland.

Q. Then, at the time you had poor facilities did
2273 you feel the cases that were brought to Portland without your desire were cases where you had ample facilities to take care of them? A. A good many cases can be taken care of with a very small amount of equipment; it does not require a lot of specialized apparatus and equipment and so forth to take care of the average run of cases.

Q. Were cases of that type brought to Portland? A. Yes, anything that required more than first-aid treatment, any small fracture or anything.

Q. I don't understand whether Mr. Marcus got you to say that interference of the hospital associations was only with respect to seeing that certain cases were covered. What are the facts on that, as to the requirement for authorization? Was that merely for the purpose of determining whether the cases were covered by the National or Industrial or did that go further? A. No, that meant authorization to do the work. They wanted you to call up and, for instance,—occasionally they would give us permission to take out tonsils. They wanted you to call up and ask if you might take out tonsils, and once in a while they would let you take out tonsils; but when an acute appendix came in you had to call up and if they thought the case was enough of an emergency they might let you take the appendix out there; but unless a man was really in dire straits he was to be put in an ambulance and sent in to Portland. That is authorization, I mean, in the strict sense, where you have the other man telling you
2274 whether you could or could not take care of a patient, and mostly it was that you could not.

Q. You very modestly said doctors are not omniscient. I assume you are referring to medical matters. A. Yes, and most anything.

Q. You had frequent contacts with Mr. Bechtold of the National and Mr. Page of the National, at least by correspondence? A. By correspondence. I don't think I have ever contacted Mr. Page personally.

Q. Did you ever become persuaded to the belief that they were omniscient in medical matters? A. No. I wouldn't consider they were.

Q. Did Mr. Bechtold ever call you about a case where he was refusing to give authorization and say to you, "I know something of the history of this case. We have had this case many times before and I have followed it and, therefore, I would like to make this suggestion—" A. No. He never offered to advise me on technical matters.

Q. Or in this case of the complaint about a fluoroscopic examination of the stomach—that was by Mr. Page. Did he supplement his letter by calling you on the phone and saying, "I know quite a lot about this. I am speaking from past experience and I don't think you should make a fluoroscopic examination"? A. No, I think in this case he was more concerned about the expenditure or the amount of fees than knowledge of the examination.

2275 Q. Here in one of the letters, Exhibit 2567—this is Mr. Page, too, complaining about an operation for hemorrhoids without his consent.

Mr. Marcus: What exhibit is that?

Mr. Jaureguy: A letter of February 12, 1937, a portion of Exhibit 2567.

Q. Did he say to you that he had been reading in Readers Digest and he had learned that you should not operate on hemorrhoids, and he wanted to call that to your attention? A. No.

Q. Was there ever anything of the kind? A. No. He has never made any suggestions as to how to treat a patient. The main thing was to try to keep a doctor from treating a patient.

Q. In cases where they took your patient from Hillsboro and brought him in to Portland, did they consult you as to the particular doctor in Portland you wanted to take care of the patient? A. No, they had a panel of doctors in Portland here that the patients were all supposed to go to. They were men employed on salary.

Q. Even among the members of the panel did they consult you as to which one of the panel you preferred to have the patient go to? A. No.

2276 Mr. Jaureguy: That is all.

Recross Examination

By Mr. Marcus:

Q. I had hoped to avoid going into some of these documents which you apparently turned over to counsel for the defendants, but since he has referred to them in the vaguest manner I will have to refer to a few.

We come first to the hemorrhoid case. That is in this Exhibit 2567. The National wrote to you under date of February 12, 1937:

"We received a statement from you for treatment of (patient's name) for hemorrhoids. This is the first information we have received on this case and since ordinarily patients of this kind are reported and authority obtained before service is rendered, we would like to have the complete history of the onset of the trouble before determining our responsibility for the patient's care. In the meantime we are investigating this man's period of employment."

Is there anything wrong in a letter of that sort, Doctor? A. They are telling me I should get authority before I would do it, which I don't do, and which I didn't do
2277 then.

Q. Yes. I guess you have the same trouble with OPS. You just don't like to contact anyone before finding out who is going to be liable. Don't you think, Doctor, the operation of any prepaid medical care system depends upon the prepaid medical care organization being in a position to know when and under what circumstances it is going to be liable? A. It does not need to know ahead of time whether they are going to have to pay certain bills in a certain month or not. I mean, what is the difference whether they know it the day before the surgery or the day after the surgery that the surgery has been done?

Q. Let us take it this way: A patient comes to you and he believes he is under a hospital association coverage. You don't bother to get in touch with the hospital association— A. For the benefit of the patient—

Q. Just a moment. I want to finish. An operation is performed and it is successful, a successful operation, and you have done very fine work and you think you are entitled to a fee of $300, and that is a reasonable fee. He feels quite happy because he is recovering and believes that the medical expense is paid for.

You then get in touch with the hospital association and they say, "You didn't get in touch with us before, and we are going to have to investigate this case," so they investigate and they come back and say, "We are sorry.
2278 This man left the employment of so-and-so about a month ago and is not covered."

Don't you think the three parties concerned would all be unhappy in that instance? You would not be happy. The patient would not be happy and I don't think the hospital association would be happy. A. No, for the benefit of the patient and his financial arrangements we very often call before we do any major procedure involving a large fee, if there is any question of whether he is covered or not; but if he comes in with a ticket and he has been covered for a number of months and he is still employed and there is no question about the case being covered at all, we go ahead and do the work.

Q. How often do you read the hospital associations' contracts, the contracts they make with the employers? A. We are more or less familiar with our own contracts.

Q. I am talking about the contracts with the hospital associations, which the hospital association makes with a concern. Now how often do you read those contracts? A. You mean the contracts that National and Industrial make?

Q. Yes. A. We don't read them.

Q. So, you have no way of knowing whether or not a when a patient comes in to you he is actually covered under contract or not? He may have a full-coverage contract, which includes family, or he may have a limited-coverage contract. Isn't that so? A. If the bookkeeper
2279 where he is employed sends a ticket that says he has been covered for six months or more and is currently covered, we assume that he is covered. We don't go into the bookkeeping end of it.

Q. The only part is, I would like to know just what is done. An employer sends you a ticket stating that he has been under contract with a hospital association, we will say, for six months. Then you assume that the particular contract covers a particular man, but it does not turn out to be so. Do you think you could then go back to the employer? A. No, I accept a patient as a private patient, and what type of insurance he has, that is his own concern. If he does not have adequate insurance or if it does not cover him, that is his responsibility; it is not mine. I didn't select his insurance for him and I am not responsible for whether it is good or not.

Mr. Marcus: That is all.

Redirect Examination

By Mr. Jaureguy:

Q. Well, going back again to your experiences before 1940, you are pretty well acquainted around that community? A. Yes.

Q. Having lived there around twenty years? A.
2280 Yes.

Q. Did you ever make an independent investigation to determine whether a certain employer was covered by National or Industrial? I mean, if somebody comes in and says he is employed by the Carnation Lumber Company, for instance, do you have to find out then on that occasion whether Carnation has a contract? A. Well, in the course of years I know who everybody is covered by and where the contracts are and what type of contracts.

Mr. Jaureguy: That is all.

Recross Examination

By Mr. Marcus:

Q. Just one question: Do you ever have any new patients come into the office, any persons that you have never seen before? A. Frequently, yes.

Mr. Marcus: That is all.

Mr. Jaureguy: That is all.

(Witness excused.)

(Recess.)

2281 DR. BERNARD BARKWILL was thereupon produced as a witness in behalf of Defendants and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Jaureguy:

Q. Would you give us your name, please? A. Dr. Bernard Barkwill.

Q. Where do your live, Doctor? A. Coos Bay, Oregon.

Q. How long have you lived there? A. Thirteen years.

Q. What is your business or profession? A. I am a physician and surgeon.

Q. Have you been practicing that very long? A. Twenty-five years.

Q. Where did you practice before going to Coos Bay? A. Ashland, Oregon, and Kennecott, Alaska.

Q. What medical school did you attend? A. University of Oregon.

Q. Then did you have any further education or training? A. Yes. I am a specialist, and I trained at the University of Pennsylvania, the University of Illinois, and postgraduate work right here in town.

Q. What is your specialty? A. I am an eye, ear, nose and throat specialist.

2282 Do you belong to any medical societies? A. Yes, I belong to five: The American Medical Society, the Oregon Medical Society, the Oregon Academy of Otolaryngology, the Coos and Curry Medical Society, and the Pacific Coast Eye, Ear, Nose & Throat Society.

Q. How long have you been a member of those societies? A. The Pacific Coast Eye, Ear, Nose & Throat Society and the Oregon Academy of Otolaryngology for about fifteen years, and I belonged to the AMA when I first got out of medical school.

Q. Has that been continuous? A. That has been continuous.

Q. Have you ever held any offices in your local society? A. Yes, I have been President and Secretary.

Q. Have you ever held any offices in the State Society? A. None.

Q. Have you ever been on the Council in the State Society or ever attended any meetings of the House of Delegates of the State Society? A. One meeting as a visitor.

Q. Now, during the time that you have been practicing have you ever had occasion to take care of patients who were members of any commercial hospital associations? A. Yes, I have.

Q. About what period of time would that extend? Was that during your entire practice? A. No.

2283 Mr. Marcus: Your Honor, I would like to make the same objection with respect to this line of testimony as made with respect to Dr. Durno.

The Court: The same ruling.

Mr. Jaureguy:

Q. That started when? A. 1929, when I was in Ashland, Oregon.

Q. Do you know what the expression "taking tickets" means? A. Definitely.

Q. And do you take tickets of commercial hospital associations? A. I do not.

Q. I wish you would tell us whether that is a result of any action by any medical society or the result of your experience or from some other reason. A. Well, I quit taking tickets from the Industrial and National Hospital Associations because they didn't pay my bills. Every time I would send them a bill, say, for instance, for four calls or five calls, they would cut about one call off and then send a long cock-and-bull story about they didn't allow so many treatments for that kind of a case, until I got sick and tired of it. So I wrote a letter to them along about 1932 and told them that I wouldn't take any more tickets,

and if I had signed up to do any work for them I wished to rescind that signature and call it null and void.

Q. At any time since have you taken tickets? A. Yes, I did.

2284

Q. When was that? A. About a year and a half after that, down in Ashland, they had threatened a lawsuit against one of the doctors there involving one of the National Hospital Association cases. So the National sent a man down to see me and asked me if I would take their tickets again, and I said, "Sure, if you don't cut my bills." And they said, "Well, we promise not to cut your bills." So they never did again. They never questioned a bill. And all the time I was in Ashland until I went back East—I was in general practice then—all the time I was in Ashland until I went back East they never cut a bill and we got along very nicely.

Q. When did you go back East A. I left in 1935 and was gone two years, finishing my eye work.

Q. When you came back is that when you went to Coos Bay? A. That is when I went to Coos Bay, July 1st, 1937.

Q. Then did you take tickets? A. Yes, I started taking tickets again, and the same old rigmarole. They cut the bills. That is the thing that burned me up more than anything else, along with all the irritating things like okaying this and questioning this. They were actually dishonest in cutting bills that I sent in to them.

Q. What do you mean, "irritating things like questioning this"? A. Oh, everything; either you failed to get authorization, or they would wonder if your treatment was right—things you have heard here for two weeks.

2285

Q. You don't think in medical matters they were omniscient? A. I don't think anybody is.

Q. Now are you a member of the Coos Bay Hospital Association? A. I am.

Q. You have been a member of that group for how long? A. Ever since it started.

Q. That is, you were not one of the original four, were you? A. No.

Q. We have had evidence here that four doctors in what was then Marshfield had the Coos Bay Hospital Association and then at a certain time they permitted the doctors in Marshfield and North Bend to join. Was that when you joined? A. That is when I joined.

Q. And you have been a member of it since? A. Ever since.

Q. Now, there are several hospitals in Coos County, of course. Some of them are general hospitals and some of them private hospitals; is that correct? A. That is correct.

Q. Which are the general hospitals? A. McCauley Hospital in Coos Bay is run by the Sisters. That is a general hospital. And the Keizer Hospital in North
2286 Bend, anybody can take their patients there. Then out in the Valley there are some small hospitals in Bandon, Coquille and Myrtle Point. All those are doctor-owned or doctor-run hospitals.

Q. Private hospitals? A. Well, private. I suppose anyone can take a patient there.

Q. That is what I mean. A. Yes.

Mr. Jaureguy: You may take the witness.

Cross Examination

By Mr. Weinstein:

Q. Dr. Barkwill, you have been here for two weeks in the courtroom? A. No, I haven't, but I have been reading the papers.

The Court: What do you mean by "cock-and-bull story"?

A. I will answer that very definitely. When the National Hospital Association wrote me a letter back as to why they cut my fee they would give me a lot of, oh, offhand answers, that "Our records show that a case like this should have about four treatments instead of five." How do they know whether it is a long drawn out case or a short case?

The Court: That still doesn't explain what "cock-and-bull" means. I had occasion to look up the other day what "kangaroo court" meant. I have a little book here that explains what "cock-and-bull" means, and you would be surprised what it says.

2287 The Witness: It is like any slang expression. It has a wide meaning. Anything to throw me off the track and not give me a definite answer.

Mr. Marcus: I think I will move to have that book put in evidence, your Honor.

The Court: Judge Biggs sent me that; he is a very fine

man in Philadelphia. He evidently thought we needed it out here.

Mr. Weinstein:

Q. You found that the so-called lay associations were dishonest and they cut your bills; is that so? A. Yes.

Q. That burned you up, didn't it? A. It certainly did.

Q. Are you connected with the Coos Bay Hospital Association? A. I am President of it.

Q. They don't burn you up, do they? A. Well, I am one of the directors.

Q. You don't get burned up there. Do you ever cut doctors' bills for the Coos Bay Association? A. Surely we do.

Q. I see. A. We don't cut them routinely. Every time we send back a bill, every time it is questioned, we either allow it or not allow it, and the man can come up and talk to us or write to us, which they do a lot of times, and we will get his side of the story. But the National deliberately and routinely—I would say they cut two out of
2288 three bills I sent in to them, and I had no answer, no recourse, couldn't say a word about it—take it or leave it.

Q. What happens to the physician in the Coos Bay Association when you decide to cut his bill? A. We usually say the contract does not cover it or the man is not covered, and that is all there is to it.

Q. What if he doesn't understand it? He takes it or leaves it? A. We explain it to him.

Q. What if he doesn't get it? He takes it or leaves it, doesn't he? A. What do you mean, "What if he doesn't get it"?

Q. If he doesn't get your explanation he takes it or leaves it? A. We show it to him, and any man in our association can come to our directors' meeting any time and sit there as a visitor or enter into the discussion.

Q. Have you got any correspondence with the National Hospital Association? A. With me?

Q. Do you have any in your files or wherever you may keep it? A. No, I haven't.

Q. You have none with you? A. No. I hoped to find a lot of this stuff, but it has been about twelve years ago since I severed my relations with them, and I looked all through my old files and couldn't find a thing.

2289 Q. That is too bad. You mean that two out of three of your bills have been cut by the National and you have had correspondence with them about these cut bills of yours, and you can't find a single letter about that? A. I didn't find anything. I threw them all away. I didn't know I would be here in court twelve years later on this stuff.

Q. Apparently you didn't. You were also bothered about authorization. That was bad business too, wasn't it? A. That didn't bother me so much. A lot of my work is not necessarily—my eye work, or something like that, is not necessarily an emergency.

Q. Doctor, let me ask you: Despite all these petty grievances that you had with the so-called lay owned associations, isn't it true that you would not have stopped taking tickets unless you knew that that was consistent with the society policy? A. Oh, no. The society had nothing to do with it. This was in 1932, before anybody in the state started these organizations.

Q. I may be confused here. I am not sure, but didn't you say on direct testimony that when you went down to Coos Bay in 1937 you started to take tickets again? A. That is correct.

Q. Yes. So around 1937, or maybe a little later, let's talk about that period. A. All right. What do you want to know?

2290 Q. Apparently you don't remember from one minute to the next. What I want to know is if around in that period you did not stop taking tickets because you knew it was consistent with the Society policy, even though you had various petty grievances that have been recited in the courtroom for two weeks? A. I took tickets about a year and a half, and in all that time I was down there I was allowed to do one eye operation under either the National or Industrial Hospital Association. I operated on an old judge's eye there for glaucoma, and in a year and a half that is all the business I got out of the National. Every time I would have a case in my line they would refer it to Portland. I never had a chance to work at it. I never had a chance to make any money. They would send all these cases up to Portland.

Q. I wonder if you take the same position as the doctor before you, that you think it is possible there were any cases that came to your attention that you couldn't treat? A. Oh, certainly.

Q. I see. Now let's get the dates straight. Doctor, for

about a year and a half after 1937 you continued to take tickets, and then you got burned up to the point that you were apparently in ashes and decided not to take them anymore? A. That is correct.

Q. Let me ask you this: When were you President of the local society? Do you recall what year? A. You mean the Coos and Curry County Medical Society?

2291 Q. Yes. A. Oh, about ten years ago.

Q. About 1940 or so? A. Something like that.

Q. By the way, just as a matter of information, I would like to find out are the doctor members of the Coos Bay Hospital Association—is that about the same membership as in the Coos and Curry County Medical Society? A. It is the same with two exceptions.

Q. The same with two exceptions. Now, I want to get this picture just exactly straight: You stopped taking tickets from these associations only because you had your own personal difficulty? A. No, that is not the only reason. We got busy and we formed an association of our own and I worked for them.

Mr. Weinstein: That is all, Doctor.

Mr. Jaureguy: That is all.

(Witness excused.)

2292 Dr. John P. Brennan was thereupon produced as a witness in behalf of the Defendants and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Jaureguy:

Q. Would you give us your name, please. A. J. P. Brennan.

Q. Where do you live, Doctor? A. Pendleton, Oregon.

Q. You have been there how long? A. Twenty-seven years.

Q. How many? A. Twenty-seven years.

Q. What is your business or profession? A. I am a general practitioner.

Q. A physician and surgeon? A. I practice primarily internal medicine.

Q. You have been practicing medicine how long? A. Oh, about twenty-nine years.

Q. Where did you get your medical education? A. The University of Wisconsin and Rush, Chicago.

Q. Then you came to Oregon from there? A. Yes, sir.

Q. Where did you practice before you went to Pendleton? A. I never practiced anywhere else.

2293 Q. Oh. I thought you had been there twenty-seven years and had been practicing twenty-nine? A. Well, I was counting my two years of internship.

Q. I see. Do you belong to any medical societies? A. Yes, I do.

Q. Which societies? A. I belong to the American Medical Association, the State Medical Society, I am a Fellow of the American College of Physicians, and—oh, heavens, there are two or three others, not important.

Q. Is there any local medical society in Pendleton? A. Umatilla County Medical Society.

Q. How long have you belonged to the Umatilla County, the State, and the American Medical Association? A. Oh, I belonged—well, since I have been in the practice of medicine, twenty-seven years.

Q. Has that membership been continuous? A. Yes, it has.

Q. Have you been an officer of any of those societies? A. Yes, I have been President of our county society two or three times and Treasurer two or three times. I was on the Council of the State Medical Society. I can't recall the year, but sometime in the 30's. I have been a delegate from our county society almost every year since I have been in Umatilla County.

2294 Q. You are also one of the defendants in this case? A. Much to my surprise.

Q. When did you first learn that you were being considered as a conspirator by anybody? A. I beg your pardon?

Q. When did you first learn you were considered by somebody as being a conspirator with others? A. When I received the long, lengthy document from the United States Marshal's office.

Q. Now, during the course of your practice have you had occasion at any time to take care of patients who were members of commercial hospital associations? A. Yes, sir.

Q. Do you know what the expression "taking tickets" means in medical language? A. I do.

Q. During any of this time have you taken tickets? A. Yes, I have.

Q. Do you take tickets now? A. No, I don't.

Q. About when, can you tell us, did you stop taking tickets? A. I don't know exactly. I suppose some five or six years ago; maybe longer than that.

Q. Now, your changing your practice in that regard, was that due to some action of the medical society or was
2295 it due to your experience, or was it due to something else? A. It was due primarily to my experience. As the gentleman preceding me said, that thing happened to me also. They were unscrupulous, it seemed to me, in their refusal to cooperate. They would invariably cut bills. They questioned your procedure to the point where it was insulting, when it came to almost questioning your ethics, and I just got fed up with it.

Q. That is the reason you quit? A. Yes.

Q. What about the doctors in Umatilla County? Can you tell us whether they all refuse to take tickets, or do some of them take them and some of them not? A. Well, I don't know the percentage of those that take tickets and the percentage of those that don't, but I presume there are doctors that take tickets. There are some that don't. The colleagues of mine in my office don't.

2296 Mr. Jaureguy:

Q. I have here, Doctor, Exhibit 2037. A. What is the date?

Q. That is just the number, 2037. A. Excuse me.

Q. This is one of the early ones. It consists of two parts. One is a letter from you to Mr. Foley on your letterhead, dated February 11, 1940, and it reads as follows:

"Mr. Clyde Foley, Medical-Dental Building, Portland, Oregon. My dear Clyde:

"Will you please let me know what organizations engaged in providing medical services are approved by the State Society. Is the Multnomah Medical Service Bureau sponsored by the Society? What about the National Hospital Association?

"As you know, they are now promoting a scheme of health insurance for families and I would like to know the attitude of the Society. This matter is coming up before the County Society meeting next Tuesday, and I would like to have a reply Tuesday. The Multnomah Medical Service Bureau informed Dr. McBee that all elective surgery was to be done in Portland and all emergency surgery had to be approved before operation. Naturally we don't approve of this.

"The Umatilla County Society is functioning. I am President, Dr. T. M. Barber is Secretary, and Dr.
2297 Frank Belt Vice-President. Your sincerely, Joe."

I see you ask just this one question, you ask one question about the National, and that is "What about the National Hospital Association?" Well, how did you happen to ask them about National Hospital Association? Didn't you know anything about it? A. I don't know, unless as President of the Society I was instructed to write the letter. After all, we weren't too well advised as to what these hospital associations meant. We had had our troubles with them and probably that was an effort to go to the fountainhead of knowledge and find out just where we stood. I don't know of any other reason for it. I presume I wrote the letter at the request of the Society. I signed it as its President.

Q. Well, didn't any of the rest of the members, you or any of the rest of the members, know enough about the National Hospital Association to know whether they were in good or in bad with the State Medical Society? A. Evidently we didn't. We are asking for information.

Q. That wasn't written as a part of this conspiracy, was it? A. No, sir.

Q. Now, did you have anything to do with the organization of OPS? A. Yes, I do.

Q. Did you have something to do with the or-
2298 ganization of it? A. Well, I was one of the original Trustees. Yes, I presume I did. I was on the Board of Directors early. I wasn't one of the members of the first Board of Directors, but shortly after it was organized I went on the Board of Directors.

Q. And how long did you remain a member of the Board of Directors? A. I am still a member of the Board of Directors.

Q. And how long did you remain as a Trustee? A. Well, I am still a Trustee. You see, the Board of Directors are elected from the eleven Trustees. There are five members of the Board.

Q. So you have been a Trustee ever since? A. I have been a Trustee ever since its organization and a member of the Board since shortly after its organization, 1942.

Q. Now, at meetings of the Board do they ever, is there ever a proposal made to try to stop doctors from taking tickets? A. No, sir.

Q. During any of this time you have been on there no

such proposal has been made before the Board? A. Not on any regular meetings of the Board.

Q. Well, at any time did you ever join a conspiracy to endeavor to destroy any hospital associations? A. No, sir.

Q. Did you ever either singly or in cooperation with others ever try to prevent doctors from doing as
2299 they desired with respect to hospital associations? A. No, I never did.

Q. Or did you, either alone or in cooperation with others ever try to induce hospitals not to permit doctors to be on their staff if they cooperated with hospital associations? A. No, sir.

Q. Or ever try to induce hospitals not to admit patients if they were members of hospital associations? A. No, sir.

Q. Or try to induce doctors not to consult with doctors who had any association with hospital associations? A. No, sir.

Q. And you plead not guilty to all counts? A. All counts.

Mr. Jaureguy: You may take the witness.

Cross examination

By Mr. Marcus:

Q. Doctor, I believe you said you are from Umatilla County. A. A little louder, sir. I am partially deaf. I would appreciate if you would speak up.

Q. Surely. Doctor, I believe you said you are from Umatilla County? A. Yes, sir.

Q. Isn't it true that there was a period when there
2300 was not a Umatilla County Medical Society? A. I presume there was. When I first came there it seems to me that I was instrumental in organizing that Society. I am not too sure whether we had a society that wasn't working or whether we organized it anew or not, but I know that we weren't functioning very well.

Q. Well, there is something in some of these documents, Doctor, which gave me the impression that the Society was dormant for a while and then was revived since 1936. Do you have any recollection of that? A. Well, I think you are partially correct. The Society wasn't too active. We had a number of older men who weren't too active and it did wax and wane there for a period. I think we have al-

ways had a society since I have been in Pendleton, however.

Q. Doctor, you have been a delegate from your local society to the State Society, have you not? A. Oh, perennially.

Q. And you have been a Councilor? A. Yes, sir.

Q. Now, could you tell us the area which your Councilorship covers the district? A. The Councilor from Eastern Oregon comes from the—it is the Seventh District and it covers the Counties of Umatilla, Union and Baker and as far east as Ontario.

The Court: Wallowa?

2301 A. Wallowa County, yes.

Mr. Marcus: I am glad your Honor pronounced it. I was going to mispronounce it.

Q. You stated you have been on the Board of Directors of OPS for some time, have you not? A. Yes.

Q. You haven't attended every meeting of it, though, have you? A. I have attended every meeting of the Board with the exception of probably two since 1942. One of those I was ill and the other was there was no transportation.

Q. And you took part, did you not, during this period in the negotiations which were never consummated between OPS and Northwest Medical Service Plan with the idea that Northwest would confine itself to hospitalization and you people would confine yourselves to medical service, is that not so? A. I was in on discussions, yes.

Q. Now, Doctor, you stated that you were on the Council of the State Society in the '30s. I don't believe you located the period any more accurately than that. Can you locate that period, make it more definite? A. I am afraid I can't. I think it was around '35 or '36, but I couldn't be sure.

Q. Doctor, I show you Exhibit 293 and just ask you to look at the first paragraph and see whether that re-

2302 freshes your recollection. A. I don't understand, if Dr. Weese was present—one of us must have been there as a guest or for some other reason, because Dr. Weese until his recent election as President of the State Society was a Councilor and might have been Councilor at that time. Now, I don't know. Ordinarily we would only have one Councilor from Eastern Oregon, and Dr. Weese lives in Ontario, which is covered by the Seventh District.

Q. That does say, though, does it not, Members of the

Council present? A. It says, "A special meeting of the Council of the Oregon State Medical Society was held at the Campbell Court Hotel on Monday, February 17 at 6:15 P.M. The following members of the Council were present:" Evidently that is it.

Q. That is right. And that was in 1936? A. Yes, February 17, 1936.

Q. And your name is indicated as being present? A. Yes, I would say so.

Q. Now, Doctor, you stated on direct examination that you neither singly nor in collaboration with anyone else ever tried to prevent doctors to do as they desired to do with respect to hospital associations, is that not so? A. Yes, sir.

Q. Isn't it true, Doctor, that you were a member of the State Council at the time they issued a statement of
2303 policy which they sent to the members of the State Society which did just that? A. I don't recall.

Q. Might have been, though, might it not? A. No, I can't say that.

Q. Well, Doctor, I have here Exhibit 293, which is the same document I just showed you, and I will read one paragraph:

"There was discussion concerning the methods to be used in bringing the Statement of Policy to the attention of the membership of the component societies.

"Upon motion, duly made and seconded, it was voted that Dr. Fitzgibbon and Dr. Sears be appointed to formulate a suitable letter of explanation and that this letter, accompanied by a copy of the Statement of Policy, a copy of the Principles of Medical Ethics, and a copy of the Interpretive Decisions of the Judicial Council of the American Medical Association, dealing with contract practice and related matters, be sent to each member of the component societies."

Does that refresh your recollection? A. What is wrong with that?

Q. The question I asked you, Doctor, was whether you were a member of the Council at the time this Statement of Policy was evolved and sent to each member, and you said you did not think you were, or something to
2304 that effect. A. Evidently I was. As I just told you, my name is on that letter, so I must have been a member of the Council.

Q. That is right. Doctor, you have been active, have you not, as an officer of the State Society and as a member of that Society to attempt to persuade doctors in your district to associate themselves only with approved medical care organizations? A. I don't understand what you mean by "approved medical care organizations."

Q. Let's take OPS. You don't have a local plan of your own operating, too? A. No, we don't. We are the Eastern Oregon Division of OPS.

Q. Then, the question I will ask you is whether or not you have not taken an active part in that territory, that district, to persuade medical societies and members of medical societies in your area to have nothing to do with prepaid medical care organizations other than OPS? A. No, I would not answer that question definitely. I would say this: As a Director of the Board of OPS I was very much interested in having all the doctors on the panel and, in so far as my interests lay, why, yes, I did talk in that manner. However, it did not take much persuasion, as you can see by looking at the panel.

Q. When you say you did talk to them, you took that up— A. Certainly; I am an officer and member of
2305 that organization. I should back it up, shouldn't I?

Q. Just a minute. You took that up with other local societies besides your own, did you not? A. I don't understand your question.

Q. Well, you did not limit your propagandizing, did you, to Umatilla County? A. No; when people ask my opinion I always tell them I thought it was a very good deal.

Q. Did you take any affirmative steps in that direction with respect to the other counties in your district? A. You mean by personally going around and soliciting?

Q. And talking to them? A. None other than probably asking to talk at county society meetings, things of that kind. I probably extolled the Oregon Physicians' Service.

(Photostatic copy of Minutes of Union County Medical Society of July 27, 1948, thereupon marked Plaintiff's Identification No. 2078.)

Mr. Marcus:

Q. Doctor, I have here an exhibit marked for Identification No. 2078, which consists of the Minutes of the Union County Medical Society of July 27, 1948, and it is stated:

"Report by Dr. Kirby of a telephone call from Dr. Joseph Brennan of Pendleton that Dr. Brennan had in-

vestigated the Oregon Physicians' Service setup and
2306 suggested early confirmation of a separate pool for E.O.M.S."

Does that suggest to you that it is a little more accurate than you just stated with respect to forming the OPS? A. That was a pool—maybe you don't understand why that pool was formed. Do you want me to explain it?

Q. Go right ahead, Doctor. A. You say I can go ahead?

Q. Oh, yes, sure. A. Our organization is set up with a variety—set up with a different number of pools throughout the state, and we did have formerly a state pool, the Multnomah County pool and three or four pools in the southern part of the state, but it seems that some of the organizations, some of the different county societies felt that probably they would rather have a number of different pools in order to control their economy a little better than in a statewide pool, so, at the request of some of the members of the Eastern Oregon District Society, which is a group of all county societies, Oregon Physicians' Service permitted them to form what we call the Eastern Oregon pool which includes Umatilla, Union and districts around Baker and Ontario, and that was the reason for that.

Q. How has that pool been making out financially? A. It has been getting along very nicely.

Q. What percentage does that pool pay off? A. For the last—oh, I would say for the last six or eight months,
2307 I would say we have paid 80 per cent.

Q. What did it do prior to that time? A. I beg your pardon?

Q. How did it do prior to that time? A. It has always paid pretty well. There was one quarter when we were besieged by the State Insurance Commissioner, when we had to put up a little money, that we didn't pay so well. I have forgotten what the percentage was. There was quite a lot of grumbling and discontent about it.

Mr. Marcus: That is all, Doctor.

Mr. Jaureguy: That is all. Thank you, Doctor.

(Witness excused.)

The Court: Who will be your witnesses this afternoon?

Mr. Jaureguy: Dr. Straumfjord of Astoria will be our first one, and I have given them the names of the others. I don't have those names right now.

Mr. Marcus: We have not got the names of anyone else.
Mr. Jaureguy: Didn't you get them?
Mr. Marcus: No.

(Thereupon, at 12:00 o'clock noon, a recess was taken until 2:00 o'clock P.M.)

2308 Court reconvened at 2:00 o'clock P.M., pursuant to recess.

Dr. Jon V. Straumfjord was thereupon produced as a witness on behalf of Defendants and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Jaureguy:

Q. Your name is Jon V. Straumfjord? A. Correct.
Q. Where do you live, Doctor? A. Astoria.
Q. How long have you lived there? A. Since 1934.
Q. What is your business or profession? A. I am a physician.
Q. Have you been practicing as a physician—since when? A. I graduated in 1929 and served an internship in the County Hospital, the Multnomah County Hospital, and I was on the staff of the Coffey Clinic & Hospital until 1934.
Q. Then you went to Astoria? A. Then I went to Astoria, into the practice of medicine at Astoria.
Q. And you have been practicing there ever since?
2309 A. Yes.
Q. What medical school did you attend? A. Oregon.
Q. Do you belong to any medical societies? A. Yes.
Q. What societies do you belong to? A. I belong to the Clatsop County Medical Society, the Oregon State Medical Society, the American Medical Association, the American College of Physicians and the North Pacific Society of Internal Medicine.
Q. How long have you belonged to the first three of those that you have named? A. Well, the Clatsop Medical Society, since 1934. I believe I was a member of the American Medical Association before then. Then I was a member—I am not sure now—of the Multnomah County Medical Society, but that I would not be sure of, though.

Q. You have been a member of the Oregon State Medical Society how long? A. I presume that I was a member—that as a member of Multnomah I automatically became a member of the Oregon State Medical Society.

Q. If you paid your dues? A. Yes; I believe at least since 1934.

Q. Have you been an officer of any of those societies?

A. Yes, I have been President one or two times—I
2310 would not be sure—of the Clatsop County Medical Society, and I have been a Councilor of the State Medical Society, oh, about eight years. I am not entirely sure.

Q. About eight years? A. I think about eight years. I am not entirely sure just when I became a Councilor.

Q. What period of time did that cover? A. Continuously since I think about 1942.

Q. Up to the present time, you mean? A. Up to the present time, yes. I am a Councilor from the third district; that is, Columbia, Clatsop and Tillamook Counties.

Q. During the course of your practice, have you had occasion to treat patients who are members of commercial hospital associations?

Mr. Marcus: I would like to make the same objection, your Honor, with respect to the testimony of this sort as made with respect to that of Dr. Durno.

The Court: The ruling will be the same. The testimony will be admitted subject to the objection.

A. You mean, have I been called upon to treat patients who have been covered, so-called, by commercial associations?

Mr. Jaureguy:

Q. That is right. We call them "members" here, but it also means they are covered by commercial hospital associations. A. I have also treated members of the
2311 associations.

Q. You mean stockholders? A. Stockholders, yes. I want to make that distinction.

Q. Those who were covered, have you treated those? A. Yes, in 1934 and 1935, one of my early experiences with practice of that nature was in Clatsop County.

Q. Has that continued during all this time you have been there, that you have treated these patients who are protected by commercial hospital associations? A. Yes, up to the present.

Q. Do you know what the expression means among doctors of "taking tickets"? A. Yes, sir, I am familiar with that.

Q. Do you take tickets of commercial hospital associations? A. No, I don't.

Q. I want to ask you whether that decision on your part was or is the result of any action of any medical society or whether it is based on your own experience or for some other reason? A. The reason for not taking tickets is—the reasons are manifold, but it is not the result—the action of not taking tickets in not the result of any external coercion or force of any type.

The reason for not taking tickets dates back to my first contact with the commercial associations who furnish tickets to their subscribers. The first thing that I encountered, of course, in our practice was that we
2312 were not on their lists, so-called lists; our names were not posted in the places of work of people who were covered, and it was perfectly obvious and common talk with the physicians that the subscribers or members did not have a free choice of physicians, which of course was a very fundamental objection.

Then, another obvious thing which has been present throughout our contact with them—

Mr. Marcus: When you say "we" are you talking about your own personal experience?

A. My own experience.

Mr. Jaureguy:

Q. You have had partners from time to time, during a part of the time at least? A. Yes, I have always been associated with someone. My first associate was Dr. Cone. Later—

Q. C-o-n-e? A. C-o-n-e, William H. Cone. He moved to Portland or Oswego, and then I became associated with Dr. Allen M. Boyden, and his father, Frank Boyden. This association existed until 1945.

Prior to that Dr. Berg, who is one of my present associates, joined me, and at the present time there are six of us in a group. When I say "We did this" or "I did this" it applies to that group.

One of my very early experiences that led me to feel that I would not accept tickets was in general the conduct or
the difficulties inherent in carrying out proper
2313 medical care under that practice. Not only did the patient have a restricted choice of physicians but

the service rendered to patients was also variable.

Q. Did you say variable? A. Variable, under apparently the same contract, and was dependent a good deal upon either the importance of the individual to the management perhaps or other factors which are not clear, and it was in many instances perfectly true that he who could squawk the loudest about the shortcomings of the service would get more.

Mr. Marcus: Doctor, just a moment. I would like to object to this testimony, your Honor, and have the doctor confined to what he knows and not to what he is imagining.

Mr. Jaureguy: We are not trying the hospital association. We are finding out his reasons for not taking tickets. As I said the other day, our theory is that wherever they get the information as to reasons for not taking tickets they are entitled to tell it.

The Court: Go ahead with your story.

A. Then, in addition to the operation, from the patient's standpoint in this respect—

The Court: I don't know that I agree with you that you are not trying the hospital associations.

Mr. Jaureguy: That is coincidental, if your Honor please.

Q. That is all right. Go ahead. A. Along with
2314 this difficulty of obvious interference with the patient in both the selection of his physician and in the distribution of medical care under the same contract there were also difficulties which applied to us as physicians in carrying it out, carrying out our duty to the patient, I mean, which included, of course, our obtaining authorization for doing medical procedures, which are, of course, the reasonable function of any scheme, inherent in any scheme on the part of the plan to safeguard its funds, and for that reason we were continually being restricted in the amount of service that we deemed necessary for the patient and for myself. I did thousands of dollars worth of work for patients to keep up a standard of practice which I felt I personally had to keep up, whether I was paid for it or not.

The Court: Were your parents foreign-born?

A. Yes.

The Court: What nationality?

A. Icelander.

Q. Icelander? A. Icelander.

Mr. Jaureguy: That does not disqualify you.

The Court: I was thinking of the large Scandinavian population down there.

Mr. Jaureguy: Yes. If you get Mr. Skulason in he will tell you the proper way to pronounce this doctor's
2315 name.

The Court: Yes. We haven't got a Welsh name, have we?

Mr. Jaureguy: I don't think so.

A. The point is that at least in a free society a physician is dependent upon his patients by virtue of the quality of the work he renders them and not because a subscriber has a certain coverage, and I felt I could not render adequate service under the fee schedule they were giving, and limit myself to procedures that were contemplated under the service.

There is, I think, ample evidence to show that I was more or less, shall we say, harassed by the managers of some of the associations because I did too much laboratory work or that the examinations were too extensive, or that the service contemplated only rendering such type of servic which would exclude certain procedures.

The main reason, in other words, in my experience and in my viewpoint, was not financial remuneration particularly but the limitations and interference on the relationship with the patient imposed by the associations.

Of course, it is perfectly true that we had many difficulties with the collection of bills. There is an instance of such previously presented in this court.

Q. Just for the purpose of identifying what I think you have in mind, I would like to hand you Exhibit 1876, and ask if that is the one you have reference to? A. Yes.
2316 Q. Would you tell us about that case, Doctor?

A. This involves a man who had a stroke and who entered one of the hospitals in March, March 28, 1944, under one of the hospital association coverages.

The Court: Which one?

A. National Hospital Association. He left the hospital on August 29, 1944. The man was sent a statement in October, 1944, and repeated statements were sent to the man, but naturally he was not able to take care of them because

of his physical condition. These bills were sent out at periodic intervals to him and later to his widow. This is the widow whom I "haunted" for payment.

Mr. Jaureguy:

Q. You mean you are quoting somebody in saying that? A. I am quoting Mr. Bechtold's testimony, as related in one of the newspapers.

During this time his widow was also a patient of ours. The man subsequently died. We itemized the statement; we checked the status of the hospital payments and found that the National Hospital Association had assumed responsibility for the hospital bill, and along with that of course they had the diagnosis and full particulars of the man's condition.

We finally received a copy of a letter—that is, the widow brought in a copy of a letter from Mr. Bechtold, which was dated July 31, 1947,—that is almost three years
2317 after the services were rendered her husband, during which time we had "haunted" the widow, stating the reason why her husband's account had not been paid was that "Dr. Straumfjord, who we understand was your husband's physician, has refused to furnish the association with a report of his services which is necessary to enable the association to consider the claim."

They had all the information from the hospital records.

Q. These statements that you sent to the widow, were they itemized statements? A. Itemized statements. The itemization that was necessary was simply the hospital care from such a time to such a time, because it was under blanket coverage. They never pay for anything else. That is, that itemization is complete in rendering a bill for a man under contract for so many days in a hospital.

I wrote Mr. Bechtold on November 17th stating that I had seen his letter to the widow, which was dated July 31st, and this was in November, stating that "You had refused to pay our bill dating back to 1944 because you did not have adequate information from me as to what the services were. However, a checkup at the hospital reveals that you paid the bill."

But, I said, "Therefore, I am telling you, against my principles, that this man I know was suffering from hemiplegia."

On December 11th—this letter was written on November 17th. On December 11th I received this letter:

"Regarding your account referred to in your
2318 letter several weeks ago, it pleases me to learn of your interest on behalf of the widow but since Mr. (name of patient) is deceased, I would suggest that your claim be presented to the administrator of his estate."

He knew he was a welfare patient by that time. I felt that this was a matter of principle and suggested to Mrs. (name of patient) that she see an attorney, and she did. Subsequently, a portion of the bill was paid. The amount was perfectly satisfactory to me, but the reason given for not paying this bill was not. When the attorney contacted Mr. Bechtold he said that they did not have sufficient information about the case—

Mr. Marcus: I think you are reading from these papers, aren't you?

A. Not quite. I am skipping quite a few things.

Mr. Marcus: But you are reading from correspondence. You did not read all that in the newspapers, did you?

A. No, but this is all personal knowledge.

2319 Mr. Marcus: Your Honor, we offered these documents with Mr. Bechtold. I don't mind the witness telling the story, but when he proceeds to read these documents we are going to have a duplication in the record and we are just wasting time.

The Court: Go ahead and do it in your own way.

The Witness: The reason they alleged for the non-payment of my bill was not that the information that was at hand in the case was insufficient, but he didn't know who he should pay.

That illustrates, I think, some of the conduct, some of the relations, some of the difficulties that we had.

Mr. Jaureguy:

Q. I wonder if you can tell us now, as nearly as you can, the date he died and the date the bill was finally paid. A. The check was made to the attorney. I don't believe it is here. My recollection is that it was in January of 1948.

Q. When did the patient die? A. The patient died sometime in '47, but the services were rendered for this patient in '44.

Q. Oh. I had the impression he died in '44. A. No. He left the hospital and died later. I took care of him, in-

cidentally, at that time, but he had exhausted his coverage at that time.

Q. Now here is Exhibit 1935 from Mr. Page to you dated December 15, 1937:

2320 "Dear Doctor: We recently received statements from you for care of a total of 42 patients, employees of various companies in the Astoria district.

"In checking over these statements, which are for care of patients for various medical conditions, we find that out of the 42 patients who consulted you charges were made for complete examinations in 20 of these cases, and in 14 of them an additional charge of $2.00 was made for routine office laboratory work."

And then the letter says:

"Considering the total number of patients who consulted you, the number requiring special examinations seems to be entirely out of proportion. We appreciate that some of the cases require more extensive work than others, and therefore in the past have paid a $3.00 fee for first call, for complete examination, including office routine laboratory, if necessary, but the ordinary case, as you know, involves only a charge of $2.00 for first office call."

Do you remember that? A. Yes, I remember that.

Q. I wish you would give the explanation here, as to why you gave them the $3.00 examination instead of the $2.00 examination, the 20 out of 42. A. Well, perhaps I
2321 was rather overawed by the difficulties, you know, in collecting the rest of the legitimate bills. I probably did all the work that I charged for in the 14. But in order to keep peace in the family I probably left those charges out.

Q. You mean that you really did it to more than 20? A. There were 14 that had additional laboratory work.

Q. Oh, yes. A. Is that in the statement?

Q. The 20 you gave— A. There were 42 patients.

Q. 20 of them you gave complete examinations, and then in 14 more an additional charge of $2.00 for routine office laboratory work. A. I don't quite follow you. Do you want me to explain what routine laboratory work is?

Q. That is what the letter says, for routine office laboratory work. What was that? A. I think perhaps that is explained at the back of one of those tickets, what routine laboratory work is. I have very vague ideas about it. I

paid very little attention to what their routine was, because we did what we thought was essential rather than—I don't know what routine laboratory work is, even today, but the Association apparently knows.

Q. You don't practice medicine by routine, then? A. No. No, I hope not.

2322 Q. Now I have here Exhibit 2686, dated March 12, 1935, to Drs. Straumfjord & Cone, in which they tell you that for hospital visit, $2.00; subsequent visits, $1.00; residence visits, $2.00; and then injuries covered by flat fees, the last schedule published by the State Industrial Accident Commission less one-third. Now were those fees they paid you for cases covered by the Industrial Accident Commission? A. Well, I presume so. The reason I say that, my memory isn't that good, perhaps, that I could explicitly say that that was the charge, the fee, but I recall—this was in 1937, was it not?

Q. This letter was written in '35. A. In '35. Well, in '39, four years later, we had some dealings with the Industrial and National Hospital Associations in which they promised to pay for the full schedule of the Industrial Accident Commission, so I assume that that prevailed during those years.

Q. Did you take care of members who were under the Workmen's Compensation Act and whose care had been contracted to the National Hospital Association during that period of time? A. Did I?

Q. Yes. A. Yes.

Q. Now, when you had one of these members that was covered by the National, did they always permit you

2323 to keep the patient and take care of him until treatment was concluded? A. Basically, the contract calls for authorization, and in anything but acute emergencies you were not authorized to proceed with their care until you had explicit authorization from the Association. And we were requested when we wanted to have a consultation to refer patients to their central office in Portland, from which they would take care of the care from then on. I can recall many instances in which I requested specific references which were allowed, and many instances in which it was not permitted. That is, they assumed that they were able to tell better where my patient should go for special care than I.

Q. Who do you mean by "they," that "they assumed"? A. Oh, perhaps Mr. Kirk, perhaps Mr. Bechtold, as the

case may be, depending on where the case was being referred.

Q. Now, you said a few moments ago that you thought in 1939 there were some negotiations or conferences with regard to fees. Will you tell us about that? A. I don't recall exactly, but sometime after '37, I assume, we had a committee of the local county society which served as a liaison committee between the society and the associations, and we met a good many times. During one time, at least, we were approached by the manager of the Industrial and also the manager of the National for a reduction in our fee, and I believe we agreed to the reduction in fee
2324 on their promise to open up their associations to all physicians in the county. This committee functioned for a number of years, and later we had a new association in the field, and some of us—

Q. What was that? A. The Multnomah.

Q. The Multnomah Industrial Hospital Association? A. That is it. And there was some contract involved; that is, there was an apparent threat of the Industrial, I believe, losing one of the big contracts there, and we didn't feel sure that that was anything better—that is, to work for another association in Portland in which we had very little voice, if any, was any advantage to us or rendered any public service, and I believe we agreed that we would not service tickets for this association but only for the Industrial Hospital Association and the National Hospital Association.

Q. Do you remember action of that kind was taken at a meeting of the medical society? A. Yes, I believe such an action was taken on the recommendation of this committee, which had been functioning, working, for some time.

Q. Then were there any repercussions after that following that action? A. Yes, I believe the officer of the State Medical Society came down and indicated to us that we were not thinking right about the condition, the situation, and that we should mend our ways.

2325 Q. With respect to the Multonmah, you mean? A. That is right.

Q. What did they suggest you do? A. What did the State officers suggest?

Q. Yes, if anything. A. Well, I don't recall any specific suggestions, but I definitely recall that no action on the part of our local society, the Clatsop County, was taken on the matter.

Q. Well, were their suggestions along the line that you

should also take care of the tickets of the Multnomah? A. Well, I think that was the main purpose at that time because the Multnomah at that time was being excluded by the doctors of Clatsop County.

Q. Later on did Dr. Dammasch or anybody from the Multnomah— A. Yes, Dr. Dammasch came down and met I believe perhaps—I am not sure whether he met with the whole society or with this committee.

Mr. Marcus: Doctor, were you on the committee?

A. I was on the committee.

Mr. Jaureguy:

Q. And what happened then? A. I don't believe anything happened, truthfully. I don't remember that there was anything, any action taken as a group in connection with that.

2326 Q. Well, now, I don't know as you told us when you quit taking these tickets. A. I believe it was early in '44, I believe.

Q. Now, did you know Drs. Van Dusen and Pilkington? A. I did, yes, I did.

Q. Well, were you well acquainted with them? A. Yes, very well.

Q. Did you ever do work for them? A. Yes, I did work for them and on them, you might say.

Q. For them and on them. Well, now, did you know during this period of time that they were stockholders in the Industrial Hospital Association? A. Yes. In fact, I was offered stock in the Industrial Hospital Association. Just thought of it now. Dr. Pilkington was a very fine gentleman and was a very good friend of mine and he thought that I should become a stockholder in a good company like that.

Q. Well, at any time was there any discrimination against either of those doctors by reason of their holding stock in the Industrial Association; I mean by any medical society? A. No. They were active participants in all our deliberations; in fact, Dr. Van Dusen sat in on most of our committee meetings with the associations on this smaller group of doctors. And I know of no form of discrimination either professional or social or otherwise.

2327 Q. Now, you have been a member of the State Council, I think you said, since 1942 or thereabouts? A. About that time.

Q. And at any time that you have been a member of

the Council have there been any proposals in the Council meetings to endeavor to induce doctors not to take tickets? A. No, not to my knowledge.

The Court: What happened to Dr. Pilkington's stock, do you know?

A. I do not know. I presume that—

The Court: When did he die?

A. When did he die?

The Court: Yes. Quite awhile ago?

A. Yes. He died during the war, in nineteen—I can't remember—I should say about '40 or '41, '42, somewhere in that period.

The Court: Did he remain a stockholder until his death, is that your idea?

A. As far as I know he did, yes; in fact, I am sure he did because he told me so. And Dr. Van Dusen died last year and he remained a stockholder until his death.

Mr. Jaureguy: You may take the witness.

Cross Examination

By Mr. Marcus:

Q. Doctor, you came down here to be as prejudi-
2328 cial as possible towards the hospital associations, did you? A. No, I don't believe so, except as my experience makes me prejudicial, if you want to call it.

Q. Well, Doctor, apparently in the newspaper articles that you read you didn't read anything about how the association authorization operated did you? A. I am fairly familiar with it in my own experience.

Q. Well, Doctor, you testified on direct that you had to get authorization for anything except emergencies. Now, we have got a number of doctors who preceded you who stated that they had to get authorization in serious cases—A. I—

Q. Just a minute, Doctor. Let me continue. Every time someone from one of these hospital associations went in to see you with a cold did you have to get authorization? A. Which segment do you want me to answer of the question?

Q. Either. A. Will you rephrase it again? Did I have to get authorization for treatment of a cold?

Q. Yes. A. No.

Q. Then your statement on direct was incorrect, was it, when you said you had to get authorization for everything except emergencies? A. Well, all major—that is incorrect to that extent.

2329 Q. Yes. A. The intent—very explicitly on the ticket—may I refresh my memory by consulting the ticket there? The ticket is the link between the association and the doctor.

Q. Well, Doctor, on direct you were willing to make a statement without looking at that ticket. A. Well, I think you misconstrued or at least I did not intend to be quite that sweeping perhaps, but— I used to be able to read these without any difficulty. In any case, I don't see the direct—

Q. Well, if that is a ticket, Doctor, I doubt if it is in the ticket. A. It indicates there is some correspondence, for instance, in which I did some skin testing of an individual and Mr. Page, the manager, said he doesn't recall that that has been authorized.

Q. And you turned over that correspondence to counsel for defendants, didn't you? A. Yes, I did.

Q. Now, Doctor, I think you mentioned that you were President of your local county association. A. Well, I believe I have been. I couldn't tell you what year, but—

Q. Well, I was going to ask you if you would give us the approximate year or years. A. Well, truthfully it is somewhere between 1935 and '40 perhaps, maybe later.

2330 It does not seem to involve any signal honor and signal duties.

Q. Now, Doctor, when you talked about the troubles you had with the hospital associations were you referring to the National and Industrial? A. Not solely. I have had some contact with other associations prior to that. I think I have some correspondence about a patient who I treated who I had been taking—who worked for the Piggly Wiggly, or something of that sort, and I wrote for authorization to treat the patient and I think some six months later I got communication from the manager of the association that all medical care of the subscribers of Piggly Wiggly were treated by Dr. Vincent and that they could not allow me for any service, remuneration for any services of that company.

Q. Was that the Weston Company? A. Weston, I believe that is true.

Q. Now, Doctor, one of your objections to working with patients under the hospital association coverage was that

the services to patients varied. Are you implying, Doctor, that would give one patient one type of service and another patient another type of service depending on whether he was an executive or a laborer? A. That is what the association wanted to do in many instances.

Q. What is the basis of that statement, Doctor? A. What I really said was that the amount of service
2331 the subscriber got under the coverage depended a good deal in many cases on who he was in the organization covered.

Q. How do you know, Doctor? I mean, that is something you just think might be so, isn't that so? A. I have been there for fifteen years and I know somewhat of the coverage that is applied to them from my correspondence, rejection of claims, and so on, and in one instance they would honor a claim and give him only six months coverage, or other instances they give twelve months or eighteen months coverage.

Q. And you knew in each instance where that happened that one was an executive and the other was a laborer or one was the friend of the manager and the other was not a friend of the manager? A. I know that it often happened that way. Not in each case.

Q. Actually you don't know. There might have been a question of coverage in one case and not a question in the other, isn't that so? A. I do know.

Q. How do you know? A. I do know what I did for the patient. I do know what he received as hospitalization, and I do know that under the clauses, the same apparent clauses, one patient got more than another. I think that there is no difficulty in demonstrating that.

2332 Q. You knew in each case, did you not— A. I didn't say each case, but many of them.

Q. You knew in each case, did you not, that one patient had been under coverage for six months and the other patient had been under the coverage for three months, and another patient had been under the coverage for four years. Is that what you are trying to tell us? A. I know individuals. I think of one right now who has been covered for ten years for one condition, and the contract says for so long usually. Now, I know of no contract, any of these hospital associations, I am sure, never sold any contract which would cover a patient for ten years for the same condition.

Q. Well, Doctor— A. That is what I mean.

Q. That is what you mean? A. Yes.

Q. And that is your answer to my question? A. Isn't it?

Q. No. A. What was your question?

Q. My question was whether or not you knew in each instance that the particular patient had been under hospital association coverage for three months and you knew that the next patient was under hospital coverage for six months and you knew that the next patient was under hospital coverage for three years. A. I didn't—I said
2333 I didn't know each instance, but in sufficient number of instances to know that this was a policy.

Q. And you were sitting in the Portland office of one of these associations and deciding in each instance that one person— A. I didn't say each instance.

Q. Let me finish. In these instances that John Doe and Richard Roe were in the same category but that you would allow Dr. so-and-so a certain amount and Dr. so-and-so another amount with a similar case. Is that what you are saying, that you put yourself in each instance in place of the person in charge of these hospital associations? A. No. You misunderstand, I think. These contracts, at least again —I have seen them, I know—I have seen the contracts, read them. I know that they stipulate certain restrictions on the coverage which would say that he will have hospital and medical care for one year for the same condition, and I know that some individuals with this same condition have had five years of care. That is what I am saying.

Q. Well, Doctor— A. I don't need to have any individual in Portland to tell me the length of his coverage or strictly—

Q. Well, how could you know whether a contract with an employer is still in existence, has been renewed, or whether the employer has recently left? Do they tell you all these details when they come into your office? A. Still
2334 the point escapes you.

Q. I am afraid the point escapes you, Doctor. A. No. I have known individuals who have been under coverage continuously.

The Court: You are charging favoritism, aren't you? A. I am.

Mr. Marcus: And I am trying to get the basis of it.

The Court: Do you want him to name the cases?

Mr. Marcus: I would like to have him name cases.

A. Perhaps that is confidential information.

The Court: You don't need to.

A. I can name him—and I don't think that anybody who has gone into it thoroughly will doubt that, question that.

Mr. Marcus:

Q. Doctor, you seem to be quite smug about that. Are you implying that these doctors who continue to associate with the hospital associations have a set of ethics distinctly inferior to yours? You don't think it is ethical to have that sort of thing go on? A. That is the point. That is why we are in here. That is why all this ruckus, I think.

Q. Well, Doctor— A. I do think it isn't ethical.

The Court: Wait a minute. Ten minutes to cool off.

(Short recess.)

2335 Q. Have you had some connection with OPS? A. Have I some connection with OPS?

Q. Let's work it this way: Are you a participating physician? A. Yes.

Q. Have you held any offices with OPS? A. I am not an officer of the State—I am not a Director. I am a cooperating physician. I am a member of the Clatsop County Society and I am a member of a supervisory OPS committee, but I have no office, as determining its policies, if that is what you mean.

Q. Have you ever been on one of the committees of OPS? A. Well, the Council, the State Council, is the body to which the Directors of OPS are responsible, and I am a member of the Council.

Q. I asked you whether you have been on one of the committees of OPS? A. I don't know whether OPS has any committees.

Q. Is your answer No or that you don't know? A. I am trying to recall whether I have served in any capacity on a committee. I don't recall any committee that I have served on for the OPS.

Q. I have here Exhibit 359, which is a page from the issue of Northwest Medicine for June, 1944, and, with reference to OPS, it states:

"Committee on professional relations, Gordon B.
2336 Leitch, R. Lloyd Jegart, and Jon V. Straumfjord."

Is that your recollection? A. Yes, I recall this committee but I don't remember it ever having anything to do or doing anything.

Q. Well, Doctor, you stated from the chronology that events that happened down in Clatsop County you started to deal with Industrial and National and then the State Society came down. Isn't it true that thereafter the Society and yourself decided not to deal with these hospital associations? A. Which hospital associations?

Q. The commercial hospital associations. A. We decided not to deal with Multnomah.

Q. The commercial hospital associations. A. No, we decided in 1939 to deal only with the National and—

Q. Yes, but I am going beyond that, now. After the State Society contacted you and spoke to you about the Multnomah Bureau, didn't your society then decide not to deal with these commercial hospital associations? A. I believe there was a lapse of some five years before there was any, what we might say, non-cooperation.

Q. You testified with respect to this case where you treated someone for some length of time and then he died, and then the question of recovering for your services came up. You stated that you gave itemized statements.

Doctor, I have here Exhibit 1482 which is part
2337 of the same file from which you read, but a separate document, and that is this statement:

"Astoria, Oregon, Astoria Clinic, 7/24/47, $334" and then it names the patient.

That is your idea of an itemized statement, is it not, Doctor? A. I suppose you need an itemized statement for a refrigerator.

Q. Isn't it true— A. May I explain.

Q. Yes. A. May I expain why this is an itemized statement. This is the end bill, and the original bill was for services for such-and-such a time in the hospital, and there was nothing else claimed, and the number of days there. I don't see why any reasonable person would say that is not itemized.

Q. Well, Doctor, isn't it true that generally you refuse to itemize bills when they concern these hospital association patients? A. That is not true. It did not concern us whether the patient was a hospital association patient or not. We rendered our itemization if they wanted it, but we do not want to fill out a two-page report. That is a nuisance.

Q. I will read from Exhibit 1449, which is a letter from the City Lumber & Supply Co. of Astoria, Oregon, dated

October 28, 1946, addressed to the National Hospital Association:

2338 "Referring to your letter of October 24, 1946, Mr. (name of patient) was injured away from his employment. The local doctors do not want to fill out your forms,"

and then there is a receipt from you.

That is an instance when you did not itemize a bill? A. That says their form, not a bill; their form, not a bill.

Q. Your position now is that you itemize— A. To the patient.

Q. —bills to the patient but not on their form? A. Not on their form because their form is not only a bill but it is also an inquiry about certain conditions which they have no right to know, at least as far as I am concerned. That is between me and the patient, which is the principle involved.

Q. You do not want to reveal certain information, is that it? A. Not confidential information that has been declared confidential, and it is our duty to protect it.

Q. You do that with OPS, too, I suppose? You treat that as confidential? A. I do.

Q. I am asking you a question— A. But OPS, that is a professional organization, made up of men who are doctors.

Q. When you send in a report to OPS, is it your assumption that the business manager does not look at that report? A. I assume most of the clerks look at it.

2339 Q. They all have M. D. degrees, is that your assumption? A. When you go to a doctor's office you expect his nurses and the employes of the doctor to have a proper respect for confidence. We are held responsible for it.

Q. Now, Doctor, you referred to some case where there were a number of examinations involved, did you not? Isn't that so? A. Yes. This is just a duplication.

Q. Isn't it true that there are some doctors who will pad accounts and some doctors who are inclined to overcharge, or do you consider that all doctors have wings? A. Just like attorneys.

Q. That is, some attorneys are inclined to pad and some attorneys are inclined to overcharge, isn't that so? A. I think so.

Q. Now, Doctor, I have here Exhibit 2689, which is one of the documents you have turned over to your counsel.

This is a letter from National to you, dated March 26, 1938:

"We received your statement for care of (name of patient), an employe of the Tidewater Timber Company, who has been under your care since November 29, for an injury to the sacroiliac joint which we understand he received while in the course of his employment. According to your statement, this man was also treated beginning February 1, 1938, for an abcessed finger, and if the information we have, to the effect that (name of patient) was not employed since November 24, 1937, is correct, he would not be entitled to treatment at the expense of the Association for the finger condition which developed in February of 1938.

"Will you please rebill us for care of this patient, including only the charge for care of the injury which he received while in the course of his employment."

Is there anything improper in that? A. Do you have my letter in reply? If you will read that, I think you will see.

Q. Your reply is simply a statement of the circumstances. If you want me to, I will read it. A. Read it.

Q. This is a letter of March 28, 1938, from you to National:

"We are in receipt of your letter dated March 26th requesting that we bill you for the care of this patient including only charges for the care of the injury which was received while in the course of employment. I am sorry to state that the information which you have is, I believe, incorrect. This man's abscessed finger was the result of extension of the tuberculosis process and not the development of a new process.

"We persuaded this workman not to force upon you the claims he had on you for taking care of his tuberculosis, and now you write us a letter disclaiming responsibility for a portion of the medical care which we rendered this patient. Upon your letter, one would infer that your coverage applies solely to injuries sustained in the course of employment."

Then there is this letter from National to you, which is dated April 8, 1938:

"I have just read your letter regarding your treatment of (name of patient) for the infected finger condition, and

in view of your explanation the association is assuming your charge. You will find our check enclosed."

Now, Doctor, you stated you have been on the State Council how long? A. My memory is not clear on it. I don't remember exactly, but I should imagine—my best recollection is about eight years.

Q. About how many meetings have you been able to attend, would you say? A. There are on the average of about twelve, or ten meetings a year, I suppose.

Q. I am asking you how many you attend? A.
2342 Ten to twelve meetings per year, and I have attended most of them.

Q. You have attended most of them? A. About 80 per cent, probably.

Mr. Marcus: That is all, Doctor.
Mr. Jaureguy: That is all.

(Witness excused.)

2343 Dr. E. G. Chuinard, having been previously duly sworn, was recalled as a witness on behalf of Defendants and was examined and testified as follows:

Direct Examination

By Mr. Jaureguy:

Q. The question that was presented which you were told not to answer was to tell us in a general way what the reason was that Dr. Klingler was not admitted to the Medical Society. A. Because of improper conduct, as the medical staff and administration of Emanuel Hospital considered it, and therefore, because of that, it was felt advisable not to admit him to membership in the County Society at the present time.

Q. In a general way, what was that improper conduct? A. Dr. Klingler is associated with two other physicians, both of whom did not have their membership at Emanuel Hospital on the medical staff renewed.

Dr. Klingler persisted in admitting their patients into the hospital under his name, and then these doctors would come in and do surgery or deliver babies and proceed with the case. In other words, Dr. Klingler, despite several warnings and admonitions, was persisting in delivering hospital facilities, private hospital facilities, to doctors that those facilities had been denied to, and for that reason the

man was left off the staff in 1948, at the end of 1948.
2344 The procedure at Emanuel Hospital is that all hospital appointments are renewed at the end of each year, and, in fact, a man may be demoted on the staff from one kind of staff to another, which of course decreases his privilege, because of certain reasons, or moved up on the staff, which increases his privileges, and Dr. Klingler's membership simply was not renewed at the end of 1948.

Thereafter, he re-applied and wrote letters and made certain explanations as to why, for the time being, he would like to have the privileges of the hospital, and he was, thereafter, placed back on the staff, as I recall, in August of last year, 1949. During that time he was not a member of Emanuel Hospital medical staff.

Mr. Jaureguy: You may take the witness.

Cross Examination

By Mr. Marcus:

Q. Those two doctors that you referred to were associates of Dr. Klingler? A. I don't know whether it is an association or partnership, or whatever it is. They practice together. That I do know.

Q. They are the two doctors who had trouble with the Medical Society in the early '30s or late '30s? A. I don't know about that definitely. I know that one and perhaps both of them are members of the Medical Society
2345 even yet. I am sure one of them is.

Q. Well, I was handed a note by your counsel giving his notes as to what you had told him was the reason. I have here that one of these gentlemen was not a member of the Medical Society. Does that refresh your recollection? A. Well, I am not sure about one, as I mentioned. I am sure that one of them is.

Q. Isn't it true that both of these doctors were subjected to discipline by the Medical Society? A. Not that I know about.

Q. Not that you know about? A. No.

Mr. Marcus: Well, your Honor, I am going to have to ask to have these names put in because that is the only way apparently I can bring this out, since this witness does not know about the circumstances. We have the documents, your Honor, in the record already which involve these two persons.

The Court: Go ahead.

Mr. Marcus: With your Honor's permission, rather than call them—

The Court: Go ahead. I told you months ago we would wash all the dirty linen of the Oregon doctors.

Mr. Marcus: Well, your Honor, I would like—

The Court: I told you that months ago.

Mr. Marcus: Yes, and your Honor has also been careful,
and I think it is very proper, to preclude the names
2346 of persons.

The Court: Where we can.

Mr. Marcus: Where we can.

The Court: You don't need to talk about it any further. Go ahead with anything you want to do.

Mr. Marcus: We will give the names to the Reporter afterwards.

The Court: Oh, no. It will be in the papers. Let us hear it here instead of having to buy a paper in the morning. What Reporter, this girl?

Mr. Marcus: No, I mean the Court Reporter.

The Court: She will get it from him, Go ahead.

Mr. Marcus: Then, your Honor, those doctors were Drs. Phillips and Staats, were they not?

A. Correct.

Q. I understand the hospital does not like the idea of having doctors not connected with the Medical Society hospitalize patients there, is that right? A. That is not true, so far as I know. I think I testified when I was in court the last time that I nominated one doctor who was not a member of the Society, and that individual in fact served on the committee which had to do with this very thing we are talking about, removing a second man from his staff and then also finally removing a third man.

Q. Your hospital has a closed panel, doesn't it?
2347 That is how this happened, isn't that so? A. There
is nobody admitted to the staff that the administration does not wish to have practice there.

Q. Let's not fence. Can a doctor, a qualified doctor in the State of Oregon, operate on a patient in your hospital who is not an official member of your staff or any of the clinical staff, can he operate on a patient in your hospital? A. Of course not. I can't go to any other hospital in town and operate if I am not on the staff.

Q. They are all closed panels, then? A. Certainly.

Q. You say you are the one who made this objection with respect to Dr. Klingler being admitted into the Medi-

cal Society, isn't that right? A. That is right. I brought this point up.

Q. Did you bring it up after he had been interviewed at this meeting? A. Yes. That has been talked about a number of times since then.

Q. But it was not brought up at the time he was there, was it? A. Only with reference, as I remember, to his association with Dr. Phillips and Dr. Staats, that he was still with them. I am sure that I did not state to him directly, "You won't become a member of the Medical Society because you are still associating with them," or "because you are letting patients into Emanuel Hospital."

2348 Q. Your best recollection, then, is that you did bring up the subject of his association with these doctors? A. I am certain we did.

Q. But not in connection with his taking their patients to the hospital? A. I don't recall that we specifically mentioned that point to him at the time.

Mr. Marcus: That is all.

2349 Redirect Examination

By Mr. Jaureguy:

Q. Now, this doctor who is president of the staff, you say, he was on the committee that dealt with these three doctors? A. This process continued for some time: that is, during '47 and '48. And during that time Dr. Willis Watson—or before that time Dr. Willis Watson had been president of the staff. I can't mention just what year. But there is what is known as an Advisory Committee in Emanuel Hospital which is a committee which deals—they are the older men on the staff; they are made up of the president and the ex-officers and certain appointees who advise and work with the administration of the hospital, the Board of Trustees and the administrator, in recommending these staff appointments. And I am sure that Dr. Palmer, Harold Palmer—

Q. Who was a witness in this case? A. —who was a witness here, was also in on this. In fact, I know it because Dr. Palmer discussed the matter with me afterwards. Dr. Phillips practices in the same community where he does.

The Court: Who owns Emanuel?

A. Well, it is under a certain charity board.

The Court: It is sponsored by one of the Scandinavian churches?

A. That is correct.

2350 Mr. Jaureguy: Lutheran, I think.

A. The Lutheran church, but some particular synod of the Lutheran church. I can't give the exact title.

The Court: Now they raise money the way that is usually done, and that is one of their out-church activities?

A. That is right.

The Court: The same as the Catholics and Episcopalians?

A. Correct.

The Court: And they raise that money from the public?

A. Correct.

The Court: And their people run it?

A. Yes.

The Court: In cooperation with the doctors in the community?

A. The doctors act on these things as advisers.

The Court: How does a doctor get on the staff of a particular hospital? Why are you on Emanuel rather than some other hospital?

A. Of course, that is because I went into practice with Dr. Dillehunt and Dr. Lucas, and that is where they conducted most of their practice.

The Court: Then how did that happen?

A. Well, I can't say for sure, except when Dr. Lucas went in with Dr. Dillehunt—why Dr. Dillehunt made that choice I don't know.

The Court: Is it a matter of choice of the doctor
2351 in the first instance?

A. When a doctor comes to town and says he is going to practice, enter general practice, if he goes out to St. Johns Emanuel Hospital is closer to him. Or maybe they come to town and they might be a Catholic physician and they prefer to practice in a Catholic hospital, so they make application and they get a couple of members of the

hospital staff or some other doctors to recommend them and they make a regular formal application.

The Court: Generally speaking, could a young fellow with proper training just entering the practice, a man of known good character, get admitted into the hospital, to the staff of the hospital, that was his preference?

A. Not always, I would say, because there might be certain situations like during the war when certain hospitals couldn't take care of the load that they had, and they would have to tell someone they just couldn't serve any more physicians.

The Court: That would be the reason?

A. Oh, yes; they couldn't take them in.

The Court: Would there be any other reasons, though?

A. No, sir; no underhanded reasons that I know of at all have ever come into the appointment of these men on the hospital staffs. I have sat in on the executive committee in Emanuel Hospital for three years at different times, and in the discussions that come up. They apply for membership with the administrator, who refers it to a committee of doctors, which I think is called specifically a
2352 Credentials Committee, and they take such matters as this doctor wishes to present, his training, his associations, and if those doctors look like they are going to be a part of this community they are admitted.

There was a case came up at Emanuel while I was on the Board of a doctor who came to this town and applied for membership. He hadn't even opened an office yet, and so they tabled that. The next month when the meeting was called, the doctor had already moved on to another community. No, they don't just take anybody in that knocks on the door.

The Court: Mr. Marcus, you got up. What was it?

Mr. Marcus: I just get a little bit fed up with hearing this, your Honor. I don't want to attack the doctor's credibility, but there was a case that went up to the Supreme Court, in which the Supreme Court denied certiorari just this past year, where a hospital denied admission to a doctor and gave two reasons. One reason was because he was not a member of the AMA. It went up to the Supreme Court of the state, and the Supreme Court reversed on that point and upheld the hospital on the other point. It is well known

throughout the country that these hospitals are closed panels, and unless you are within the favored particular coterie you just don't go in.

The Witness: This is a closed courtroom, too. I can't practice law in it. Now I was testifying about the
2353 situation in Emanuel Hospital. I am fed up on such remarks from you, too. I testified about the situation at Emanuel Hospital and nowhere else, not even any other staff in the City of Portland.

Mr. Jaureguy: Unless I have a very bad memory, the case Mr. Marcus referred to is not in the Supreme Court of Oregon nor any similar case.

Mr. Marcus: Well, your Honor, the case went up to the Supreme Court of the United States. The man who took the petition for certiorari came into my office and discussed it with me. If Mr. Jaureguy is asserting that I am not stating the truth, I would like him to get up and say so.

Mr. Jaureguy: No, I did not say you were not stating the truth, because you didn't say when you spoke that it was from the Supreme Court of Oregon.

Mr. Marcus: I know I didn't.

The Court: Go ahead, Mr. Jaureguy.

Mr. Jaureguy:

Q. Now, were Drs. Watson and Palmer in favor of the action which you took with respect to these three doctors? A. Well, I wasn't on that committee so I can't say what each one felt about it, but they were in on the action that was taken, so I can only presume that they were in favor of it.

Q. Counsel asked you questions about "your" hospital. You don't have any connection with the Emanuel except as a member of the staff, do you? A. That is all.
2354 I am there from year to year just the same as any other physician is.

Q. When both Drs. Klingler and Staats had staff membership, were they members of the Society then? A. Well, yes, I am certain—I am quite certain that Dr. Phillips has continuously been a member.

Q. No, I say Klingler and Staats. A. I don't think Dr. Klingler has ever been a member of the Society.

Q. At least since you have been— A. Well, yes.

Q. And Dr. Staats was on the staff up to the time he was put off? A. That is right.

Q. Now were the reasons for having them off the staff solely in connection with work in the hospital? A. Yes.

Q. Do you know whether any of those doctors have membership on staffs of any other hospitals? A. I understand that Dr. Phillips and Staats now take their cases to another hospital.

Q. That is Holladay Park? A. That is right.

Q. What about Dr. Klingler? A. I don't know what he is doing now in relation to Holladay Park, but he
2355 is now on the Emanuel hospital staff. I think it ties in pretty well. He wrote letters and explained his position, like the inquiry I got from the doctor in Eastern Oregon who definitely planned on making a move himself, which indicated that he was not satisfied with his associations or arrangements. That is why I made the inquiry regarding him, and I think that my letter would indicate—

Q. That is the letter I read? A. —very clearly that I mentioned that the reasons that kept him from membership here now would not be existent if he moved.

The Court: I got the impression that he was a young fellow and got sucked into the situation.

The Witness: I think very much of Dr. Klingler personally, your Honor. I think very much of him. We served in the war. He is a nephew, I believe, of Dr. Phillips. Dr. Phillips put him through school, and Dr. Klingler's remark he made when he was down with us was that he felt a loyalty to his association because of Dr. Phillips putting him through medical school. And I met Dr. Klingler in the hall at Emanuel Hospital after I had written this letter, and I told Marion personally that I had received an inquiry about him and had written a letter in his behalf.

The Court: Something more, Gentlemen?

Mr. Marcus: I just want to ask one question, your Honor.

2356 Recross Examination

By Mr. Marcus:

Q. When did those doctors have their connections severed from Emanuel? A. If I am correct, and I believe I am, at the end of 1946. That is, at the beginning of '47 Phillips and Staats were no longer on the staff, and Dr. Klinger continued for two years. Now he was given plenty of warnings during those two years, and it wasn't until the beginning of '49 that finally that action was taken. And Dr. Severeide, Dr. Staats, and Mr. Hansen, the administrator, so testified, and the letters and documents are in the records of the hospital, if necessary.

Mr. Marcus: That is all, sir.
Mr. Jaureguy: That is all.

(Witness excused.)

2357 Dr. D. S. Swart was thereupon produced as a witness in behalf of Defendants and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Jaureguy:

Q. Give us your name, please. A. D. S. Swart.
Q. What is your business or profession? A. Physician and surgeon.
Q. You have been practicing how long? A. About thirty years.
Q. Where did you practice during that time? A. St. Johns district, Portland.
Q. What medical school did you attend? A. The Oregon Medical College, Portland.
Q. Are you a member of any medical societies? A. Yes, sir. The State Medical Society, the City and County Medical Society, and the American Medical Association.
Q. Are you on the Council of either society? A. Not at the present time, no, sir.
Q. Have you been? A. Yes, sir.
Q. And when were you on the Council? A. I served in 1943, '44, '45, and '46.
Q. Do you take tickets of hospital associations?
2358 A. Yes, sir.
Q. How long have you been taking them? A. All the time I have been in practice.
Q. Has there ever been any proposal in the Council while you were on the Council that you or other doctors should not take tickets? A. Not directly to me; no, sir.
Q. You were on the Council when? A. From '43 to '46, two terms.
Q. Now, out at St. Johns what has been the experience of doctors with commercial hospital associations? A. Well, they more or less all do work for the associations.
Q. Have there been any difficulties out there? A. Well, as far as I am concerned, there was with the Industrial Hospital Association.
Q. That was in the old days? A. Yes, sir.

Q. Something in relation to a closed panel taking the business— A. That is just exactly it.

Q. —and giving it all to one doctor? A. They sent them all to the Palmer Clinic.

Q. That is Dr. Palmer? A. Yes, sir.

The Court: One of the first things my dear father told me when I got out of law school was that doctors fight more than lawyers. Do you think that is so?

2359 A. It could be. I don't know how much lawyers fight.

Mr. Jaureguy: If possible, I want to have the doctor finish this evening so he won't have to come back tomorrow.

Q. Now, how long did that closed panel continue out there that you are speaking of? A. Well, probably about eight or ten years, I think.

Q. How long has it been an open panel? A. You mean before that or afterwards?

Q. Since then, yes. A. Well, it started during war times.

Q. And has been an open panel since then? A. Yes, I think so.

Q. Do you know whether the other doctors out in St. Johns take tickets? A. Well, they do. The Phillips Clinic that was mentioned here a while ago, he originally went in with Palmer. He is the one that originally brought them into the community, and they split up their organization, and that is when the tickets were finally allowed to be taken by other men.

Q. Out in St. Johns do the hospital associations permit you to treat a patient entirely or do they take them away? A. Well, they didn't before the Multnomah Medical Service Bureau came into activity. Before that if anything had to be taken into a hospital, why, we were told to call up over here and they would tell us where to send them.

2360 Q. And then when you would send them in where they told you did you take care of the patients after that? A. No, sir.

Q. Who took care of them? A. Someone from the National Hospital Association. We wouldn't have anything more to do with it, other connections with it, so we wouldn't know.

Q. So that you just took care of patients that didn't have to go to hospitals? A. That would be about it, yes.

Q. Was there any limitation on prescribing drugs for them, do you recall? A. Well, for awhile they paid for

the drugs, but that was discontinued too, so I don't know that there would be.

Q. While they paid for drugs do you recall whether there was any limitation on the prescriptions that you gave? A. Well, I don't think so. I never was called on that. I didn't order any more than they would need.

Mr. Jaureguy: You may take the witness.

Cross Examination

By Mr. Marcus:

Q. Doctor, are you a specialist? A. No, sir.

2361 Q. Doctor, you have mentioned that many years ago you had trouble with the Industrial over a closed panel; is that so? A. Yes, sir.

Q. That occurred prior to 1936, didn't it? A. Yes, sir. About '29, I think.

Q. Was it over by 1936? A. No, I don't think so.

Q. Doctor, isn't this what actually happened down there? The Industrial had most of the doctors on their so-called panel down there, and then you were charged with giving prescriptions to men so that they could go and get wine? A. I deny that.

Q. And then you were fired from the panel and you got the doctors to boycott the Industrial down there with the exception of the few doctors who dealt with Industrial; isn't that so? A. No, sir; I deny those charges. You can't prove them. I never heard of it before.

Q. You haven't read the documents in this case, have you? A. Sir?

Q. You haven't read the documents in this case, have you? A. No, I haven't.

Q. You were not present at Dr. Moore's hearing before the disciplinary groups in the Medical Society, were you? A. No, sir.

Q. You say you take tickets now, though, don't

2362 you? A. Yes.

Mr. Marcus: That is all, Doctor.

Mr. Jaureguy: That is all.

(Witness excused.)

Mr. Jaureguy: I don't have any more witnesses here now, your Honor. If there is no objection, I could take a few minutes to read some of the documents that I have

been wanting to read into the record, and I didn't want to take it up at other times.

I might say with respect to Dr. Gaston, who has just left, it is just a matter of record as to both matters I wanted to ask him about. That is, that he is a member of the Council of the Multnomah County Medical Society, and he takes tickets from all hospital associations.

Mr. Marcus: I won't stipulate to that.

Mr. Jaureguy: I would like to read a portion of Defendants' Exhibit 2676. This is from the Industrial Hospital Association, by Ray Brunkow, General Manager, dated May 15, 1948, to H. E. Rinehart, M. D., Wheeler, Oregon. There are three paragraphs to the letter. I wish to read the second paragraph.

Mr. Marcus: Your Honor, I understood that when a letter was to be read in the record it was to be put all together in the record, and I would like to have the same thing done here.

The Court: All right.

2363 Mr. Jaureguy: Yes, that is my understanding.

Mr. Marcus: This business of taking one paragraph at a time—

The Court: Mr. Reporter, do you understand that?

Mr. Jaureguy: I suppose Mr. Marcus has forgotten that is exactly what he did during his case.

The Court: Now you are educating me.

Mr. Jaureguy: That is correct, but he educated me how to do this, and that is what I am doing.

(Mr. Jaureguy read the second paragraph of Defendants' Exhibit 2676, a complete copy of which is as follows:)

H. E. Rinehart, M. D., Wheeler, Oregon

Dear Doctor Rinehart:

We have made a survey of the bills covering professional services you have rendered certain individuals under our insurance. It has appeared that procedures employed have reached proportions that can't be met by our insurance program. As you know, it is not the policy of Industrial Hospital Association to approve or disapprove any medical procedure, nor is it our policy to dictate procedure, however, from an economic standpoint, it must be recognized that payment for medical care is based on the dues paid,

which, in turn, are based on the assumption that
2364 recognized and more or less standard medical procedures are employed.

This Association has appreciated the cooperation that has been extended in years past. Lately, however, it appears to us that your office is employing methods of furnishing professional services which from an economic standpoint cannot be included in our insurance program, and for that reason, Doctor, we will appreciate it if you will discontinue billing this office directly for services furnished those individuals under our insurance. Upon receipt of an itemized statement presented to us by your patient, our office will make reimbursement to your patient, for those services covered at our established schedule of fees.

Our desire is to protect the doctor in seeing that he is paid for services he furnishes our members, however, it appears that clearing statements has become a burden for your office, as well as ours, in your attempt to anticipate or segregate that portion of services which come under the coverage. We feel that we will be able to explain our manner of payment to our individuals without unnecessarily burdening your office with these bookkeeping details.

Very truly yours, Industrial Hospital Association, Ray Brunkow, General Manager.

Mr. Jaureguy: This is a letter from the National Hospital Association, by W. J. Page, Manager of the Claims Department, dated October 24, 1949, to Arthur C.
2365 Jones, M.D., of Portland, Oregon, acknowledging receipt of a letter, and then saying:

(Mr. Jaureguy here read the second paragraph of Defendants' Exhibit 2708, a complete copy of which is as follows:)

Arthur C. Jones, M. D., 419 Mayer Building, Portland 5, Oregon Re: (Name of patient)

Dear Doctor: We acknowledge your letter of October 19 having reference to an account you have with (name of patient) of Gresham, Oregon.

Reviewing our records we find this matter has been discussed several times with your office and that we advised that since the service was rendered (patient) without

authority from this Association to provide the service at its expense, the matter should be taken up directly with (patient) and in event he feels he has a claim he can present it to the Association. We regret we are unable to be of help in this matter.

Very truly yours, National Hospital Association, W. J. Page, Manager, Claims Department.

Mr. Jaureguy: Defendants' Exhibit 2720. This is a letter to and a letter from the Association, just like the one of Dr. Jones was to and from. It is all right if both of them go into the record. This is dated October
2366 14, 1946, to C. I. Coyle, M.D., Medford, Oregon.

(Mr. Jaureguy read the first two paragraphs of the letter referred to, and complete copies of Defendants' Exhibit 2720 are as follows:)

C. I. Coyle, M. D., 323 Medford Building, Medford, Oregon

Dear Doctor: We acknowledge your letter of October 12 wherein you refer to a payment the Association made on behalf of (name of patient) who is a medical and hospital security individual member of the Association. You refer to a letter addressed to you written by Mr. Bechtold under date of January 14 wherein he advised you regarding the Association's payment of fees.

The Association has paid fees in accordance with Mr. Bechtold's letter in so far as the group industrial contracts are concerned. However, under the individual contracts the member makes arrangements for whatever care is required and thereafter presents a claim to the Association for payment through the member to the doctor up to the amount payable under the member's particular contract or reimbursement to the member. Under the contract by which (patient) is covered his fees are based on the premium payments he makes to the Association and office calls after the first two calls are payable at $2.00 per office call. The individual contracts vary as to premium
2367 and payments made for medical services and have no connection with the group contracts or the fees payable under such group contracts.

We trust the foregoing explains the matter in (patient) case; however, there is no attempt on the Association's

part to set the fees a doctor may charge but we merely agree to pay up to the amount provided under the particular contract. With regard to the group contracts payments we might state we have completed a new schedule which is now in the hands of the printer and a copy of it will be mailed to you in the near future. We believe a review of the new fee schedule published will convince you that the fees the Association pays are equal or better than received by a doctor in private practice. We might also add that under this schedule the full amount of the fee will be paid without discount.

Very truly yours, National Hospital Association, W. J. Page, Manager, Claims Department.

National Hospital Association, 732 S. W. Third Avenue, Portland 4, Oregon. Attention: Mr. W. J. Page, Claims Department.

Dear Sir: I have your letter of October 14, 1946, in which you explain (patient) contract with your association. I am interested not only in collecting the fees which
2368 I am entitled to, and which the National Hospital Association has paid since my return from the service, but also in seeing that my patients get the medical service to which they are entitled. Having accepted (patient) National Hospital ticket, I should not expect him to pay me more than he can collect from your association. I am sure that he and others who have similar contracts with your association do not know that they are paying for half or two-thirds of the cost of their medical care and hospitalization.

I think there will be less difficulty for me in the future if I deal with the patient directly, as the other doctors in Medford are doing, and let the patients collect what they can from the National Hospital Association. Then members of your organization can worry about how to explain to the patients why they have less than full coverage. However, the cases I have already undertaken I shall complete and bill the National Hospital Association for the same fees as the Oregon Physicians' Service pays in Medford.

Thanking you for your cooperation to date and hoping that our dealings will continue to be cordial, I remain,

Yours truly, C. I. Coyle, M.D.

Mr. Jaureguy: Now I have here Defendants' Exhibit 2728. This was taken from the envelope that had the documents that were brought in by the National Hospital Association under the Government's subpoena duces
2369 tecum. This is a rough draft; that is, labeled "Rough Draft," with the initials "CCB." I think the Court will take notice that those are the initials of C. C. Bechtold. It is addressed to Forcia & Larsen, Noti, Oregon.

(Mr. Jaureguy read the second paragraph of Defendants' Exhibit 2728, a complete copy of which is as follows:)

Forcia & Larsen, Noti, Oregon

Gentlemen: We are in receipt of the copy of the letter which was recently sent to you by the Sacred Heart General Hospital, and since receiving a copy of the letter, the writer has had a personal talk with Sister Theodore Marie, Superintendent of the Hospital, in which it was understood that the hospital will make arrangements with the employe personally and the Association will reimburse the member. Where the employe is unable to assume the charge until he can recover from us, the Association will protect the hospital in the account. I believe you can understand the reason for this notice from the hospital; however, this does not in any way interfere with the services to which your employes are entitled under this Association's contract, since our obligation is to them.

We prefer this plan where the employe personally
2370 takes up his bill, since it gives us the advantage of the patient checking the services he has received and makes him more conscious of the benefits he has received under his contract. It also protects the hospital in cases not entitled to services at the Association's expense who request the hospital to charge their accounts to the Association, which sometimes occurs. It is true it may not be as easy for a patient to enter the hospital under this plan, but no patient will be denied services to which he is entitled and will probably be more appreciative of his Protection by knowing the amount that is paid out for his care.

Arrangements have been made for our visiting nurse to call on the hospital early this week, after which a representative will call on you for the purpose of completing this new plan; and at which time I would appreciate it if arrangements could be made for him to meet with the representatives of the employes.

With reference to the case of (patient), when he has received his itemized bill from the hospital, please ask him to send it to this office and we will return our check in payment.

Yours very truly,

CCB:ma

2371 Mr. Jaureguy: I thought I had some more here that I wanted to read, but I don't have them readily available, your Honor.

The Court: All right. How many more days are you going to want to put in your case, Mr. Jaureguy?

Mr. Jaureguy: I would think that three or four days would be ample.

The Court: Then we better start on Monday, don't you think?

Mr. Jaureguy: It is immaterial to me.

The Court: All right. Come in Monday at 10:30.

(Thereupon, at 4:00 o'clock P. M., an adjourment was taken until 10:30 o'clock A. M., Monday, February 6, 1950.)

2372 Court reconvened at 10:00 o'clock A. M., Monday, February 6, 1950, pursuant to adjournment.

Mr. Jaureguy: If your Honor please, on account of some confusion in the testimony with regard to the Klamath Falls Medical Service Bureau, we have here an audit of that bureau from July 1, 1948 to June 30, 1949, which we would like to put in evidence.

Mr. Marcus: What is the purpose of it?

Mr. Jaureguy: To show the net amount from these operations or the payment to physicians.

Mr. Marcus: I don't see the relevancy of it, your Honor.

The Court: Admitted. Call a witness.

(Reports of audit, Klamath Falls Medical Service Bureau, fiscal year ended June 30, 1949, thereupon received in evidence and marked Defendants' Exhibit No. 2762.)

Mr. Marcus: On Friday, your Honor, Dr. Pitman, according to the transcript, testified he had seen the minutes of a meeting of the House of Delegates of the Oregon State

Medical Society of last fall in Northwest Medicine. I have checked through Northwest Medicine and I have not been able to find them. If there are such minutes, we would like to see them.

Mr. Jaureguy: I know nothing about it.

Mr. Marcus: Well, they have Mr. Foley—

2373 The Court: Commander, you ask Foley if he knows anything about it.

Mr. Jaureguy: We expect to call Mr. Foley as a witness anyway.

MRS. FLORENCE CARLBERG was thereupon produced as a witness on behalf of Defendants and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Jaureguy:

Q. Would you give us your name, please? A. Florence Carlberg.

Q. Where do you live? A. 1326 Southwest Taylors Ferry Road, Portland.

Q. What is your business or occupation? A. I am Secretary to Dr. Menne.

Q. Where does Dr. Menne have his office? A. At St. Vincent's Hospital.

Q. His work consists both of work for the hospital and for patients, private patients? A. That is right.

Q. You have been with Dr. Menne how long? A. Four years.

Q. Where is Dr. Menne now? A. In Mexico.

2374 The Court: Where?

Mr. Jaureguy: Mexico.

The Court: You have been here before, haven't you?

A. No, I have not.

The Court: Haven't you been in my courtroom before?

A. No, I have not.

Mr. Jaureguy:

Q. While you have been there the last four years, has Dr. Menne taken work in connection with patients who are members of commercial hospital associations?

Mr. Marcus: Your Honor, I would like to object to any testimony along this line on the same ground as with respect to that of Dr. Durno.

The Court: It may be admitted, subject to the objection. What does this bear on, something special? Was special reference made in the Government's case?

Mr. Jaureguy: No. This is a continuation of the evidence we have had in connection with others, and we are liable to have more, the testimony of members of the Council of the State Medical Society and of the Multnomah County Medical Society.

Q. I don't know whether you answered the question or not or if you remember what it was. A. I don't remember now just what it was.

Q. Whether or not while you have been there Dr. Menne has done work for patients who are members of commercial hospital associations? A. Yes, he has.

2375 Q. Is that from the start up to the present time? A. Yes, ever since I have been there, yes.

Q. And those cases, do those patients—are those patients that generally come directly to him or are they referred? A. They are referred to him by other physicians.

Q When Dr. Menne does the work, to whom does he send the bill? A. He sends the bill to the hospital association concerned.

Q. Is that true of the National Hospital Association? A. Yes.

Q. And of the Industrial Hospital Association? A. Yes.

Q. Are you a member of one of those hospital associations? A. Yes, I am.

Q. You are protected by agreement for your medical care and hospital care? A. Yes, I am.

Q. Has Dr. Menne ever, to you or in your presence, said anything derogatory of these corporations? A. No, he has not.

Q. These associations? A. No.

Mr. Jaureguy: You may take the witness.

Cross Examination

By Mr. Marcus:

Q. Is Dr. Menne a specialist? A. He is a patholo-

2376 gist.

Q. I would assume, then, not very much of his

work would be in connection with hospital association cases? Wouldn't that be so? A. That is true.

Q. You have no way of knowing, do you, Mrs. Carlberg, as to whether Dr. Menne has ever been called on the carpet by any member of the Council or by the Council itself because of taking tickets? A. Well, I don't think he has, not to my knowledge.

Q. You have no means of knowing? A. I have no knowledge of it.

Mr. Marcus: That is all.

(Witness excused.)

2377 WILLARD C. MARSHALL was thereupon produced as a witness on behalf of Defendants and, being first duly sworn, was examined and testified as follows:

The Court: Is your father Willard or William?

The Witness: William A., sir.

The Court: I knew him when he was on the Industrial Accident Commission.

The Witness. That is right.

Direct Examination

By Mr. Jaureguy:

Q. Your name is Willard C. Marshall? A. Yes.

Q. Where do you live? A. Salem.

Q. How long have you lived in Oregon? A. Since 1907.

The Court: At Salem?

A. No sir, my family moved from Illinois to Portland.

The Court: You say you live in Salem?

A. I live in Salem now, yes.

The Court: I thought the headquarters were here, the headquarters of that concern.

Mr. Jaureguy: That is right. That is correct, your Honor.

A. The legal, main office is in Salem, sir.

The Court: Is that required by statute?

2378 Mr. Jaureguy: No, it is not required by statute. It is just some sort of an evolutionary process, I guess.

Q. What is your business or occupation? A. I am General Manager of the Oregon Physicians' Service.

Q. Is most of your work in Portland or in Salem? A. I would say about three-fifths of it is in Portland and about one-fifth in Salem—speaking of office work—and on an average of about one-fifth elsewhere in the State of Oregon, various places.

Q. You say the main office is in Salem? A. The main office, in accordance with the corporate structure, is in Salem, yes.

The Court: Do you have a larger office there than you have here across the street?

A. No, we have very considerably more in Portland, your Honor.

The Court: That is your place of business right over here?

A. Yes, right across the street. That is right.

The Court: That is the sole office in Portland?

A. The sole office in Portland, yes.

Mr. Jaureguy:

Q. Could you tell us how many there are on the staff, approximately, in Portland and how many in Salem? A. Yes, approximately. I do not look at the payroll figures, the list, too frequently, but at the present time we have between 90 and 100 employees working in or directly out of the Portland office and, roughly, 30 to 35 working in or out of the Salem office.

2379 Q. How long have you been the Manager of OPS? A. Ever since it started. It was incorporated in December, 1941 and commenced business, I believe it was on July 1 of 1942.

Q. What did you do before that? A. I was Manager of the Physicians' & Surgeons' Hospital Association of Salem.

Q. How long were you Manager of that? A. During its entire existence from January of 1931 until the end of 1943, at which time it amalgamated with Oregon Physicians' Service; I mean the work of amalgamation was completed at that time.

Q. By "amalgamation" you do not mean any technical merger of the two corporations? A. No, I don't mean it quite in that sense. The doctors who were the owners of

the Physicians' & Surgeons' Hospital Association felt that their interests would be properly served by becoming an integral part of the Oregon Physicians' Service, and they so voted and caused that to be done.

Q. So, you have been Manager of some prepaid medical care plan since 1931 to the present time? A. That is right.

Q. Before that what was your occupation? A. For a year prior to that, I was employed by the Old First National Bank in Salem and for four years prior to
2380 that I was employed by the Joseph R. Gerber Advertising Agency of Portland. Before that, I worked a year for the Industrial Accident Commission, and before that I graduated from college.

Q. Will you tell us about the organization of the Physicians' & Surgeons' Hospital Association back in 1930 or 1931? A. I will have to do that in my own words. Is that all right?

Q. That is what we want. A. It would not be legal terminology.

Q. Just briefly how you got into it and what happened then. A. My first connection took place one noon while I was having lunch at home and my family doctor, who happened to be living just several doors across the street, walked in and sat down and had some coffee. I was still working at the bank at that time.

He said, "The doctors of this area are going to establish a hospital association," and he said, "I think you might be a desirable person to become manager of it. Would you come down and meet with the Board of Directors?" After doing some checking with my father and other people, I proceeded to do so and was given a job. That is how I came into the picture. You wish to know—

Q. Would that have been 1930 or 1931? A. That organization was incorporated, I think it was, in December, 1930, although the doctors had been working on plans for
it naturally some time prior to that, but I first
2381 heard about it—I would say it was about December 15 of 1930.

Q. How long after that did you start working for them? A. January 2, I think it was, of 1931.

Q. When did they first start selling contracts? A. One contract had been tentatively sold prior to the time I was employed by that group. I don't know exactly—I don't exactly know when a commitment had been made on that,

although no contract forms had actually been drawn up until I started to work early in January of 1931, at which time forms, contracts and so forth were drawn up, and we started writing business immediately after that, including the one that was previously lined up.

Q. Shortly after you started working for them, was there any discussion or conference with regard to the Industrial and National Hospital Associations? A. Yes.

Q. Just tell us about that. A. I will have to give just a little background to explain that.

Q. Yes. A. Is that satisfactory?

Q. I wish you would, yes. A. I knew a good many of the doctors in Salem because many of them were of the same age bracket as my wife and myself, and we saw them socially; that is, I happened to be friendly with them, even while I was working for the bank.

2382 I heard different ones state—and this also came up at the very first board meeting which I was requested to attend, at the time I was employed—that there was quite a bit of feeling in that area that the commercial hospital associations, which prior to that moment held all the business that was written in the area, without any exceptions at all, made a practice of utilizing a very small number of doctors. It would be maybe one clinic of two or three doctors; they might possibly have one additional doctor on the side to do certain of their work but on the average—well, I know for sure that the National Hospital Association used about four doctors at that time, out of approximately 35 to 40 doctors in the community, and, frankly, the other doctors did not exactly like that because they felt they never had the opportunity to wait on these patients.

I personally feel that was the main reason why they started their own organization, to open the thing up and make it possible for the subscribers to have more nearly their own selection of physicians, also so that the doctors, most of them, in the area would have the opportunity of waiting on these patients.

With that background, I would say it was about March of 1931, which was perhaps a little over two months after the organization actually started business, I was directed to write letters to the National Hospital Association and to the Industrial Hospital Association, asking that

2383 their management meet with the doctors in Salem.

I made an effort to find those letters but ap-

parently our files on that subject have been destroyed because, after all, that is nineteen years ago, and those files bulk up pretty heavy, you know.

But I did write those letters myself.

Q. To whom? A. Well, I wrote a letter to Mr. Will T. Kirk, who was at that time Manager of the Industrial Hospital Association, and to Mr. C. C. Bechtold, Manager of the National Hospital Association, requesting on behalf of the doctors that they meet with the group in Salem to discuss this matter.

We had no response from Mr. Bechtold, but we did have a response from Mr. Kirk who proceeded—I would say it was the latter part of March in 1931—to come to Salem, and we met one evening—it happened to be in my office. They have no medical society office or anything like that in Salem—because it was a handy place—met in my office, in our offices, and there were seven or eight doctors and myself and Mr. Kirk.

They presented to him the thought they would like to have the Industrial Hospital Association accept all the responsible doctors of the area to be on their staff to wait on their subscribers; they felt that that would be more
desirable all the way around, in line with the very
2384 reason why they decided to start their own, as you
can see.

That was refused by Mr. Kirk who, frankly, was very gentlemanly about it, but actually he told them he was going to run his own business the way he saw fit. Does that answer your question?

Q. Yes. Mr. Bechtold, you say, dic not respond to your request to come down to the meeting? A. No, we had no direct response at all. However—this is a long time ago and one's memory does not always work too well, but as I recall the legislature was on. That was in 1931. The Oregon Legislature meets on the odd years, as you know.

Q. Yes. A. That session lasted until May or somewhere around there, as so many of them do, and it was sometime later when Mr. Bechtold came to Salem, as he frequently did at that time, at legislative sessions times, and it was purely a chance meeting with two or three of the doctors that Mr. Bechtold and I happened to talk this thing over, but it was a good month after Mr. Kirk was there. We obtained no answer at all from Mr. Bechtold in regard to that matter.

Q. That is to say, you discussed it with him and did not get any answer? A. I did not discuss it with him. I do remember the doctor, however, who brought up this matter and asked about it. Frankly, I was there and I
2385 heard it.

Q. Then, during the time you were there in Salem did the Industrial and National ever open up a panel to all doctors? A. No, not in the ordinary sense. Of recent years they have.

Q. I am speaking now of the time you were with the Physicians' & Surgeons' Hospital Association. A. No, not in the sense of opening up, they did not, no.

Q. When you were with the Physicians' & Surgeons' Hospital Association, did you aid in the formation of other doctor-sponsored associations? A. In a sense, possibly I did because of the fact that the Physicians' & Surgeons' Organization at Salem was formed. Well, as I mentioned quite some time ago, that is better than nineteen years ago, now. It was very early in the game so far as doctor owned and operated groups were concerned in relation to this thing.

I think there had been only one organization of a similar type which antedated this one, and that was one at Corvallis which was formed in 1925, but was a rather quiescent organization and eventually went out of business.

Q. And the old Eugene Hospital & Clinic, that was a little— A. Yes, oh, yes, that is very true, but what I mean is the type of organization in which all reputable doctors of an area are invited to join. That is what I mean. The Eugene Clinic had always been operated on the basis of using the medical staff of the clinic, as you know. So in direct answer to your question I would
2386 say this: It was in 1932, I believe, that I was invited to come to Portland to assist with the formation of the Multnomah Medical Service Bureau. I was offered the position as general manager of that organization at that time, which I declined, and, however, I did spend about half time here for approximately six months from the fall of '32 until the spring of '33 at which time I had no further connection and returned to Salem.

Then in—I believe it must have been the fall of 1935—now, I could be off on that a little—it was around there—I was requested by two or three doctors of the Medford area to go to Medford for the purpose of assisting them in

forming the Southern Oregon Medical Service Association. I also was called to Klamath Falls, and I think it was '39, for the purpose of assisting them in forming the Klamath Medical Service Bureau, and I have been at one or two other places on a rather casual basis.

Q. Clackamas County? A. No. No, I was never called in for help in that regard.

Q. Coos Bay? A. I was there on a consulting basis once or twice but not at the time when it was formed, no.

Q. Then when did you first get into the matter of anything in connection with OPS? A. It was in the—I would say it was in June of 1941, at which time I was requested by certain doctor friends of mine who were in-
2387 terested in the matter of providing prepaid medical service plans to the public to consult with them in regard to the matter of forming an organization which could be used for statewide purposes as compared to these previously existing locals, and I did consult with them.

That fall—I guess it was late summer—we obtained the services of a competent attorney and papers were drawn and it was incorporated in—I think it was on December 6 of that year.

Q. 1941? A. Yes.

Q. And you told about aiding in the original formation of the Multnomah Industrial Health Association, which I think in 1941 was called the Multnomah Medical Service Bureau, was it not? A. Originally that organization was called the Multnomah Industrial Health Association, I believe. Now, I wouldn't be able to say for sure when the name was changed, but I do know at a later date it was changed to Multnomah Medical Service Bureau. From that it was changed to the Oregon Medical Service Bureau. From that it was changed back to the Multnomah Medical Service Bureau, and I believe that was its name in 1941, yes.

Q. And did you in the later stages of the operations of the Multnomah Medical Service Bureau, did you have any connection with it? A. Yes, I did. In, I think it was on Thanksgiving Day in 1941, I received calls from two
2388 prominent Portland physicians. They requested that if possible I come to Portland for the purpose of making a survey of the operations at that time of the Multnomah Medical Service Bureau, which, after obtaining permission from the Board of Directors in Salem, I proceeded to do.

I made such a survey and rendered a report and immediately upon rendering a report I was asked to become manager of the Multnomah Medical Service Bureau, which I did on a part-time basis. That was from about, oh, sometime in December of '41 until May of 1942, at which time another manager was employed and took office.

Q. Well, what did you do with the rest of your time if that was just a part-time basis? A. There was a period in there in which I was manager of the Physicians' & Surgeons' Hospital Association, the Multnomah Medical Service Bureau, and also Oregon Physicians' Service all at once, and it turned out to be too much of a job and I asked to be relieved on part of it.

Q. Yes. You are now full time with OPS, I take it? A. Yes.

Q. Now, when OPS was first organized was it the thought that it would do business in all the counties, I mean go into all the counties and try to sell contracts?

A. No, not necessarily. You have to go back a little
2389 bit to get the picture to see what the reasons were behind the moves that were made at that time. At the time OPS was formed there was some eleven or twelve local doctor-owned and operated organizations in various points in the state.

Q. You mean prepaid medical care organizations? A. Yes, that is what I mean. In general practically all of them, with the exception of two, which were the ones in Portland and at Salem,—but all the rest of them operated in a very limited area surrounding some focal town where there was more than an average sizable group of physicians. In the case of the Portland-Salem groups they did spread out into adjoining counties and that sort of thing. However, these organizations which were located on a rather spotty basis in the western part of the State of Oregon left parts of counties and in some instances entire counties without that particular type of service available, and nearly all of Central and Eastern Oregon had no such service of that type at all.

It is true they had the commercial hospital association service, but I am talking about doctor organization plans. Therefore, the State Medical Society felt that an organization of that type should be formed so that it could make its services available in any county or district where their services were wanted, and it was not to be thrust into any

area unless and until we were asked so to do in advance. And it has always operated on that basis. Does that answer your question?

2390 Q. Yes. And then how did OPS then start? If there was a Multnomah Medical Service Bureau operating in Portland, how did OPS get started operating in Portland? A. It was in the spring of 1942. At that time a number of prepayment organizations then existing were attempting to get contracts with Oregon Shipbuilding Corporation and with Kaiser Company's Swan Island Shipyard. I know of at least four or five which were trying to get those contracts at that time.

The Court: Those are both Kaiser operations?

A. Yes, sir, they were.

Mr. Jaureguy:

Q. Was Multnomah Medical Service Bureau trying to get it? A. Yes, they were. As a matter of fact at one time they asked me to help them get that contract and we almost got it once but not quite. And finally Multnomah was told that they could not have it. That was because of the feeling of Kaiser to the Multnomah, I presume. However, Mr. Edgar Kaiser expressed considerable interest in some sort of an organization which had a wide selection of physicians, and since they would not have Multnomah, frankly, a number of the doctors, and I myself, thought up the idea that maybe OPS, although it was not really ready to operate at that moment—it takes time to get these things to a functioning point—but that maybe the plan it had in mind would fit what the Kaiser people wanted. So that was suggested to the Kaiser people and they said, "Yes, if we can work out the details we

2391 would like that."

The details were worked out and the contracts were signed and that is how OPS happened to start operations in Portland. As a matter of fact, the first contract was Oregon Shipbuilding Corporation.

Q. Now, did the Multnomah Medical Service Bureau eventually then go out of existence? A. At that time OPS started operations in Portland it seemed an unnecessary expense to set up a complete and separate office, so, frankly, I went to the Board of Directors of the Multnomah Medical Service Bureau and arrangements were

worked out on a joint operating basis so that starting at that time OPS on a sharing of overhead costs did share their office in Portland.

We proceeded along that line for a number of months, at which point a number of physicians who were the owners of the Multnomah appeared to favor the OPS type of operation and they themselves were the one who brought about a stockholders meeting after considerable discussion and they voted to join OPS.

The Court: Now, did you have the contracts with those two yards throughout the war?

A. Throughout the war, yes, sir.

The Court: Yes.

A. That is from—well, I should say from—one was from I think June—

2392 The Court: I don't care about that feature of it.

A. Oh.

The Court: And Kaiser deducted the money from the workers' pay envelope?

A. Yes, sir.

The Court: And paid you?

A. That is right.

The Court: Now, you must have had a large number of members from those two yards.

A. We did. At one time we had a peak of—

The Court: From those two yards?

A. From those two yards we had a peak of about 65,000.

The Court: That must have been quite a jolt when you lost that business.

A. It was quite a jolt. At the height of the war he had a total membership of about 85,000 subscribers, including the shipyards, and when they closed down and that went out of the picture, oh, I think it was in '46, we went down to about 45,000.

The Court: All right. Go ahead.

Mr. Jaureguy:

Q. Then the Multnomah Medical Service Bureau went out of existence by just not rewriting its contracts and OPS writing the contracts, was that the way that was handled? A. OPS was requested by Multnomah to attempt to renew those contracts in the name of OPS.

Q. Then the doctors that had been members of
2393 Multnomah Medical Service Bureau, they were eligible to be cooperating physicians of OPS? A. Well, yes. However, a very large percentage of them already were cooperating physicians prior to that time.

Q. That is of both? A. Yes, that is right.

Q. Then were there other doctor-prepaid plans that went out of existence in the same manner? What about Southern Oregon Medical Service? A. Yes. As far as OPS is concerned there were the three, the Southern Oregon Medical Service Association, the Physicians' & Surgeons' Hospital Association, and the Multnomah Medical Service Bureau, in that order, whose doctors and owners chose to join up with OPS and asked OPS to write their contracts.

The Court: What do you call the patient? Call him a member?

A. They are variously termed, your Honor.

The Court: What do you call them in your contracts?

A. Member, subscriber—

The Court: What do you call them in the contract?

A. In the group contracts they are referred to as employees because the group contract is ordinarily written in accordance with the State law.

The Court: What do you call a doctor that works with you?

A. Cooperating physician.

The Court: That is a big awkward word, if you
2394 want my opinion of it.

A. That is right, sir.

The Court: Now, he has to make some kind of stock subscription and investment, doesn't he?

A. Yes.

The Court: It is really just a nominal investment, isn't it?

A. In communities—

The Court: Let's take Multnomah County.

A. Well, it would be $50.

The Court: $50. May he invest more, is there any point to his investing more?

A. No. He would not be permitted to.

The Court: What is the point in his investing $50?

A. That is, you might say a membership, a stock arrangement.

The Court: And if he withdraws he gets that back?

A. He gets it back, yes, sir.

The Court: Does he ever get any dividends on it?

A. No, sir, no dividends.

The Court: And it is so provided that it is not a profit-making investment, is it?

A. That is right. It is right in the articles of incorporation.

The Court: Now, what percentage of the doctors in Multnomah County—put it either way—are cooperating or non-cooperating with OPS, percentage?

A. In Multnomah County we have the lowest per-
2395 centage of anywhere in the State of Oregon.

The Court: Lowest percentage cooperating?

A. Yes, that is right. I would say about, Multnomah County, 70 to 75 per cent.

The Court: Cooperating?

A. Yes.

The Court: Is that increasing or decreasing?

A. The total number of cooperating physicians, and elsewhere in the State, has been gradually increasing.

The Court: Slowly?

A. It depends on what you call "slowly."

The Court: I am thinking about percentages. Of course, I don't mean—when these doctors came back from the war you would be bound to get a rapid increase there.

Mr. Jaureguy: Could I clarify that a bit as to whether it is percentage of doctors licensed to practice medicine or percentage of Medical Society members?

The Court: Let Mr. Marshall explain it that way.

A. Well, in the last several years we have been increasing on our list, oh, between 60 and 80 cooperating physicians per year, on the average. That is state-wide. And, roughly, oh, 40 to 50 per cent of them would be from Multnomah County.

The Court: Now, if you want to break that up in some other way, Mr. Jaureguy.

Mr. Jaureguy: Yes.

2396 Q. Have you had doctors who were cooperating physicians who quit? A. Oh, yes.

Q. And these figures you have given of 50 and 60 and so on, is that net or gross? A. No, that is net.

Q. That is net. Could you tell us the number of cooperating physicians with OPS during the years 1947 and 1948? A. I think I could approximately. This won't be right down to the exact one, but I could name you within five or ten. Will that be satisfactory?

Q. The peak number, greatest number. A. Yes. I would say in '47 it was about 940, peak number. And '48—did you ask '48?

Q. Yes. A. I think it was about 1015 at that time.

The Court: How many new doctors come into the profession each year in Oregon by graduation and by moving here from other states?

A. Those questions would better be asked of somebody like Mr. Foley, your Honor. I don't know.

The Court: Do you know, Mr. Coughlin?

Mr. Coughlin: How is that?

The Court: How many new doctors come into practice in Oregon each year by graduation and transfer
2397 from other states?

Mr. Coughlin: I can't answer that question.

The Court: Well, it would be more than the 60 or 80 new ones that he adds each year to OPS?